

Here, unlike in Bates, the disclaimer is only expansive enough to cover the advanced governmental interest. In Bates, the Bar enacted a total ban. Here, the Bar Association desires merely a disclaimer. Here, the restriction is not overly burdensome: the disclaimer is to advance the interests of letting the public know that the blog is an advertisement; that it does not predict success; and to place viewers on guard. This is precisely what the disclaimer is doing: it mirrors the government interest. Similar to Zauderer, here, a disclaimer is being used to prevent the public from potentially being misled. Also, similar to Zauderer, there is support for the finding that without the disclaimer the public is likely to make inaccurate conclusions because of potentially misleading attorney advertising.

CONCLUSION

Governments must be allowed to continue regulating commercial speech when faced with a legitimate substantial need for regulation. For attorney advertising, the need for proper regulation is paramount. The state is tasked with protecting not just vulnerable members of society, but the reputation of the entire legal system. This case strongly exhibits both elements, and without regulation, the public, and the reputation of the legal industry, will suffer. Mr. Schlossberg failed on his plea for summary judgment because the blog is commercial, and the regulation, in the face of substantial state need, is constitutional. Defendant, Glenn Howard, respectfully requests that the court grant his Motion for Summary Judgment.

Applicant Details

First Name **Naomi**
 Last Name **Singer**
 Citizenship Status **U. S. Citizen**
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 Address

Address
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11483 Hessler Road
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State/Territory
Ohio
Zip
44106
Country
United States

Contact Phone Number **972-977-9553**

Applicant Education

BA/BS From **University of Texas-Austin**
 Date of BA/BS **August 2017**
 JD/LLB From **Case Western Reserve University School of Law**
http://www.nalplawsonline.org/ndlsdir_search_results.asp?lscd=33603&yr=2013
 Date of JD/LLB **May 5, 2023**
 Class Rank **33%**
 Law Review/Journal **Yes**
 Journal(s) **US-Canada Law Journal**
 Moot Court Experience **Yes**
 Moot Court Name(s) **Dunmore National Moot Court team**

Bar Admission

Prior Judicial Experience

Judicial
Internships/ **No**
Externships
Post-graduate
Judicial Law **No**
Clerk

Specialized Work Experience

Recommenders

Dunn, Liam
ljd33@case.edu
Cohen, Jeffrey
cohenhl@bc.edu

**This applicant has certified that all data entered in this profile and
any application documents are true and correct.**

Judge Irma Ramirez
1100 Commerce Street, Room 1567
Courtroom: 1566
Dallas, Texas 75242

Dear Judge Ramirez,

I am writing to express interest in your clerkship opportunity for the 2023-2025 term. From my prior experience working for the Department of Justice in the U.S. Attorney's Office and the Bureau of Alcohol, Tobacco, Firearms, and Explosives, and for the Pacific Legal Foundation, I have gained skills in detail-oriented research, writing, and legal analysis that will be an asset to your chambers.

Writing and research have always been my passions, and what I found most fulfilling about my work in the U.S. Attorney's Office during fall 2021 was immersing myself in a particular area of law, reading everything available on the topic, and applying that research to the facts of the assigned cases. Not only was it a thorough exposure to legal areas with immediate practical significance, but it was also an opportunity to serve the public and advance justice. Through these projects, I learned about a number of policy issues and different legal strategies to handle them. This past summer I continued that work with the Bureau of Alcohol, Tobacco, Firearms, and Explosives, analyzing Supreme Court decisions and working on regulatory drafting regarding firearms. I have always believed that the best way to become knowledgeable about a particular issue is to learn about the issue from a number of viewpoints, and I hope to bring to your chambers a balanced combination of individual research skills and prior work experience.

My love of research and communication has academic as well as professional roots. Since beginning law school at Case Western Reserve University, I have worked to focus further on policy issues with a goal of protecting the most vulnerable and those without access to justice. That has manifested in a variety of experiences, from publishing a paper on the disproportionate impacts of COVID-19 to advocating on behalf of unjustly imprisoned Uyghurs in connection with the National Academies of Science, Engineering, and Medicine. This past semester, I worked for the Pacific Legal Foundation to gain a stronger understanding of what it takes to defend individual liberty and Constitutional rights. Whether the projects involved representing the U.S. government or those seeking its aid, I have loved the challenge of research and advocacy, and I hope to utilize those skills in supporting your judicial work.

This combination of academic and professional experience instilled in me a passion for research and detail-oriented work. I look forward to contributing my skills and experience to your chambers, and hope to speak with you further.

Sincerely,

Naomi Singer

Naomi Singer

Cell: 972-977-9553 Email: naomi.h.singer@gmail.com Address: 12340 Brittany Circle, Dallas TX 75

Education

Case Western Reserve University School of Law

Juris Doctor (JD) expected, May 2023

GPA: 3.20

Honors: Justice Joseph Story Intellectual Property Law Fellow (one of three 1L students selected for scholarship and teaching assistant position in 1L Property), Dean's List spring 2021

Activities:

- CALI Award (property law), Spring 2021
- US-Canada Law Journal, editor (2021-present)
- Dunmore National Moot Court Team member (2022-present)

Publications: "Disparate Effects of COVID-19 on Low-Income, Minority Populations" Ohio Journal of Public Health, Volume 3 Issue 3 (2020)

University of Texas at Austin

Bachelor of Science in Architectural Studies, August 2017

GPA: 3.6

Experience

U.S. Department of Justice, Office of Chief Counsel, Bureau of Alcohol, Tobacco, Firearms, and Explosives

Law Clerk

May – August 2022

- Drafted memos on use of tear gas and the legalities of Native American tobacco sales under the Jay Treaty in preparation for upcoming litigation.
- Researched statutes and cases relevant to use of force, short-barrel rifles, and the Hobbs Act to prepare training materials and reference for statutory writing.

U.S. Attorney's Office, Northern District of Ohio

Law Clerk

September - December 2021

- Drafted memos to advise Assistant U.S. Attorneys on ongoing opioid litigation.
- Researched statutes and cases relevant to government access to medical records.
- Met weekly with Assistant U.S. Attorneys to discuss ongoing projects.

Global Liberty Alliance

June 2021 - August 2021

Law Clerk

- Drafted and edited Global Magnitsky Sanctions dossier regarding Cuba's human rights abuses towards its doctors and medical brigades.
- Read and translated treaties and agreements between Cuba and Uruguay regarding medical exchanges and programs.

- Compiled timelines of treaties, signatories, and government agencies and organizations contributing to the forced labor of doctors to petition the U.S. government to sanction Cuba.

National Academies of Science, Engineering, and Medicine

May - August 2021

Intern

- Drafted and edited submission to United Nations Special Rapporteurs and United States Commission on International Religious Freedom regarding China's human rights abuses toward the Uyghur population.
- Drafted letters to members of Congress advocating on behalf of imprisoned Uyghur clients.
- Interviewed clients, attended Congressional hearings, and conducted research to support the clients' cases.

The Fund for American Studies

May 2021 - July 2021

Summer Law Fellow

- Attended lectures given by federal judges, members of the Department of Justice, and other legal professionals.
- Wrote a paper about the value of Constitutional originalism and its problems.
- Attended professional development seminars.

United Auto Workers International Union

December 2017 - May 2019

Legislative Assistant

- Drafted and edited legislative documents, position papers, and communication with Congress.
- Tracked legislation, contributions, and interactions with Congressional members to ensure adequate support.
- Managed finances and administrative systems with a variety of softwares.
- Assisted in the preparations for the biennial Community Action Partnership conference and International Convention.

Technical Skills

- Legal research: LexisNexis (certified), Bloomberg Law, Westlaw, CQ Knowlegis and Bloomberg Government, Microsoft Office and Outlook, Adobe Creative Cloud Suite (Photoshop, InDesign, Illustrator)

Student ID: 3510286
 SSN: XXX-XX-4536
 Student Name: Naomi H Singer

Case Western Reserve University
 Unofficial Transcript

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 06/26/2022

Academic Program History

Program: Juris Doctor
 Active in Program

Course	Description	Attempted	Earned	Grade	Points
LAWS 7120	Legal Externship II	3.00	3.00	CR	0.000
LAWS 2002	Constitutional Law	4.00	4.00	B-	10.664
LAWS 2001	Professional Responsibility	3.00	3.00	B-	7.998

Beginning of Law Record

Academic Standing: Good standing

Fall 2020						Attempted	Earned	Averaged	Points
Course	Description	Attempted	Earned	Grade	Points				
LAWS 1103	Torts	4.00	4.00	A	16.000				
LAWS 1801	LLEAP1 - Wrting Advcy & Profism	3.00	3.00	B	9.000				
LAWS 1101	Contracts	4.00	4.00	B	12.000				
LAWS 1102	Criminal Law	3.00	3.00	B-	7.998				
LAWS 1913	Pandemic Law and Ethics	1.00	1.00	CR	0.000				
						Attempted	Earned	Averaged	Points
Term GPA:	3.214	Term Totals	15.00	15.00	14.00	44.998			
Cum GPA:	3.214	Cum Totals	15.00	15.00		44.998			

Spr 2022						Attempted	Earned	Grade	Points
Course	Description	Attempted	Earned	Grade	Points				
LAWS 2803	LLEAP 3: Advanced Skills	3.00	3.00	B	9.000				
LAWS 6111	Appellate Practice	2.00	2.00	B+	6.666				
LAWS 6501	Canada - U.S. Law Journal	2.00	2.00	CR	0.000				
LAWS 4807	Criminal Procedure I	3.00	3.00	C+	6.999				
LAWS 5716	Conflict of Laws	3.00	3.00	B	9.000				
LAWS 5739	Law of Archeological Relics	2.00	2.00	A-	7.332				

Spr 2021						Attempted	Earned	Grade	Points
Course	Description	Attempted	Earned	Grade	Points				
LAWS 1201	Civil Procedure	4.00	4.00	A	16.000				
LAWS 1203	Property	4.00	4.00	A	16.000				
LAWS 1802	LLEAP2 - Wrting Advcy & Profism	3.00	3.00	A-	10.998				
LAWS 1204	Legislation and Regulation	3.00	3.00	B-	7.998				
LAWS 1901	International Law Fundamentals	1.00	1.00	CR	0.000				

Academic Standing: Good standing

			<u>Attempted</u>	<u>Earned</u>	<u>Averaged</u>	<u>Points</u>
Term GPA:	3.000	Term Totals	15.00	15.00	13.00	38.997
Cum GPA:	3.206	Cum Totals	59.00	59.00		160.319
Class Rank: 73 of 127						
Career Totals						
Cum GPA:	3.206	Cum Totals	<u>59.00</u>	<u>59.00</u>	<u>50.00</u>	<u>160.319</u>
Total Credits Earned:	59.00					

Academic Standing: Good standing

Term Honor:	Dean's Honor List					
			<u>Attempted</u>	<u>Earned</u>	<u>Averaged</u>	<u>Points</u>
Term GPA:	3.643	Term Totals	15.00	15.00	14.00	50.996
Cum GPA:	3.428	Cum Totals	30.00	30.00		95.994

Non-Course Milestones
 10/20/2020 - Substance Abuse Training Compl

End of Law Record

Class Rank: 37 of 114

Fall 2021						Attempted	Earned	Grade	Points
Course	Description	Attempted	Earned	Grade	Points				
LAWS 6111	Appellate Practice	2.00	2.00	B+	6.666				
LAWS 7110	Legal Externship I	2.00	2.00	CR	0.000				

The purpose of this document is grade reporting only. Since it may be incomplete, it should never be used as a substitute for an official transcript.

February 02, 2023

The Honorable Irma Ramirez
Earle Cabell Federal Building and
United States Courthouse
1100 Commerce Street, Room 1567
Dallas, TX 75242

Dear Judge Ramirez:

I write you today to give Naomi Singer my highest possible recommendation for a clerkship position in your chambers. Ms. Singer is a bright and motivated student, and one of the best of whom I've had the pleasure of teaching. She would be a wonderful addition to your staff.

I first met Ms. Singer when she applied for a tutoring position with the Law School's Academic Support Program. I was impressed with her immediately—her excitement for the law, her desire to help incoming first-year students navigate their courses, and her excellent communication skills. I hired her as a Property tutor without hesitation, and she did an incredible job in that role. I have received nothing but positive feedback from first-year students who sought out her services.

Ms. Singer also took Professional Responsibility with me in the fall semester. I cannot emphasize enough what an asset she was to the class. I use a mix of cold calling and volunteers, and Ms. Singer was always very engaged in the classroom. She would regularly voluntarily contribute to the discussion, adding insightful comments and asking challenging questions that helped make the learning environment more enriching. Her willingness to participate also (I believe) encouraged others to be more actively engaged in the class. These qualities that she showed throughout the course will translate well into a clerkship, as Ms. Singer will take on her tasks with the seriousness and inquisitiveness required of clerks.

I truly hope you strongly consider Ms. Singer for a clerkship in your chambers; I am certain you would not be disappointed if you brought her on board. Please feel free to reach out to me if you have any questions.

Very Truly Yours,

Liam Dunn

Liam Dunn - ljd33@case.edu

Naomi Singer Recommendation

Please accept this letter recommending Naomi Singer for a judicial clerkship position. I am Jeffrey A. Cohen, Associate Chief Counsel for the Bureau of Alcohol, Tobacco, Firearms and Explosives, United States Justice Department (ATF). This summer Ms. Singer performed outstanding services as an ATF legal summer intern providing timely and outstanding work product on multiple assignments involving complex issues involving federal regulation and enforcement actions involving the Gun Control Act, Federal criminal law, ATF regulations and ATF Tobacco enforcement actions involving the Contraband Cigarette Trafficking Act and the Prevent All Cigarette Trafficking Act. Ms. Singer provided extensive research and outstanding legal analysis in all her assignments, and in certain instances provided these excellent services under severe time constraints.

In particular, Ms. Singer provided extremely valuable assistance involving a novel claim under American Indian Tribal law involving a Canadian aboriginal Indian who operates a cigarette manufacturing company on an American Indian Reservation in New York State. This company has allegedly defrauded State governments of more than a hundred million dollars in tobacco taxes by illegally distributing untaxed cigarettes. The company pursued the novel claim that the terms of the Treaty of Canandaigua expressly guarantee *each* of the Six Nations of the Haudenosaunee Confederacy, American and Non-American, the free use and enjoyment of *all* of the sovereign lands of the Six Nations; and just as the *Nations* of the Confederacy are therefore the company is exempt from state regulation and taxation of

manufacturing activity conducted by any of the Nations or its members on sovereign Confederacy land. Thus, a confederacy *member* (or its corporate form) conducting that activity through a license issued by a Confederacy Nation that brings substantial economic benefits and employment to that Nation is exempt from all taxation and regulation.

Ms. Singer's extensive and timely research involving the historical basis for these treaties and Federal and State case law interpreting these treaties has helped ATF refute this theory and has resulted in the company reaching out to ATF and initiating settlement negotiations which would result in this company complying with pertinent Federal and State law.

Ms. Singer has abundant intellectual curiosity and an excellent work ethic. I am certain she would be an outstanding judicial clerk.

ID: 3510286
 Mercer Barristers
 Word Count: 4498

IN THE UNITED STATES DISTRICT COURT
 FOR THE WESTERN DISTRICT OF RESERVE

SIDNEY R. TUCKER, a minor,)	
By and through his Father, ROBERT)	
TUCKER,)	CASE NO.: 1:20-CV-12345
1595 West 195th St., Apt. 307)	
Rubbleton, RS 99762)	
)	JUDGE: Hon. Susan Boxer
Plaintiff,)	
)	
v.)	PLAINTIFF'S BRIEF IN SUPPORT OF HIS
)	MOTION FOR SUMMARY JUDGMENT IN
DOUBLETON COUNTY SCHOOL DISTRICT)	FAVOR OF PLAINTIFF'S COMPLAINT.
BOARD OF EDUCATION, and ZARA TINKA,)	
Principal of Madrid High School, in her official)	
and personal capacity, c/o County of Doubleton)	
Public Schools)	
18730 Athens Rd.)	
Rubbleton, RS 99723)	
Defendants.)	

PRELIMINARY STATEMENT

Plaintiff Sidney R. Tucker ("Tucker"), by and through his father Robert Tucker, submits this brief in support of his motion for summary judgment in his case against Defendants the Doubleton County School District Board of Education and Principal Zara Tinka, brought pursuant to Rule 56 of the Federal Rules of Civil Procedure. Tucker respectfully submits that this Court should grant this motion because, even viewing this evidence most favorably to the opposing party, there is no genuine dispute as to any material fact, and that Tucker is entitled to judgment as a matter of law. The Court should award damages to Tucker from Defendants for disciplining him in violation of the free speech provisions of the First Amendment to

the United States Constitution, and for depriving him of his rights to due process of law and to education.

The first basis on which Tucker succeeds is that Defendants regulated students' behavior at home, which interferes with the superior right of parents to regulate their children. In cases such as *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 89 S. Ct. 733 (1969), *Morse v. Frederick*, 551 U.S. 393, 127 S. Ct. 2618 (2007), and *Bethel School District v. Fraser*, 478 U.S. 675, 106 S. Ct. 3159 (1986), the Supreme Court established the boundaries of student free speech and what schools can and cannot restrict. Tucker tweeted at home rather than on campus or at a school-sanctioned event, which meant that Defendants' regulation reached beyond the boundaries of school and interfered with parental rights to manage their children's behavior.

The second basis on which Tucker succeeds is that Defendants violated his free speech rights. The aforementioned cases describe the criteria that speech has to meet to qualify as speech that the school can control, and Tucker's tweets do not meet them. Tucker tweeted without causing a substantial disturbance or threat thereof; his tweets were not lewd nor to a captive audience, and the school did not need to disassociate itself from the tweets. Defendants therefore had no right to punish him. Defendants overstepped their rights when they forced Tucker to delete his tweets and threatened him with expulsion if he tweeted again.

The third basis on which Tucker succeeds is that Defendants violated his rights to due process. They did not follow the procedure of the school handbook, and

proceeded to discipline students selectively. They denied Tucker proper notice and opportunity to prepare for a speedy impartial hearing, and proceeded to deny him the hearing too. Defendants punished Tucker for violations that he did not commit, and threatened him under the guise of “friendly advice.” Denying this motion for summary judgment would not only be counter to precedent, but would increase the miscarriages of justice that have occurred to Tucker and will occur to everyone after him who encounters a similar situation at school.

STATEMENT OF FACTS

The parties are Tucker, a seventeen-year-old junior at Madrid High School; the Doubleton County School District Board of Education; and Zara Tinka, principal of Madrid High School. Tucker seeks damages for the deprivation of his First Amendment and due process rights by Principal Tinka and the Board.

As a Madrid High School student, Tucker serves as one of the elected junior-class representatives to the student council. (Pl.’s Compl. ¶ 4.) Because his father is a police officer, Tucker is particularly concerned about the violence against police officers and their law-abiding supporters. (Id. ¶ 8.)

On July 1, 2020, Madrid High School Principal Zara Tinka published a letter on behalf of the school supporting the Black Lives Matter (“BLM”) movement. (Id. ¶ 11.) Tucker and many other students at Madrid High School are concerned about violent rioters and Antifa extremists, and they believed that Defendant Tinka’s July 1 letter on behalf of the school supporting BLM would create more violence. (Id. ¶

12.) In response, they wrote a letter to Defendant Tinka asking her to disavow the violent extremists and support law enforcement officers, and she did not do so. (Id. ¶ 15.) Officer Walsh, the school's resource officer, refused to sign Tucker's letter and professed to support BLM; she refused to answer whether or not she supported Antifa's violence. (Id. ¶ 14.) Tucker's classmate and student council president Violet McGuire led another group of students in writing a letter asking Principal Tinka to explicitly support BLM, though Principal Tinka as yet has not responded. (Id. ¶ 15.) Tucker saw that the school authorities provided him with neither answers nor assurances, so over the summer he tweeted his concerns about Antifa. (Id. ¶ 17.)

When the school year began virtually on September 7, 2020, Tucker and his classmates attended classes via Zoom; because they were off campus at home, ostensibly they were free during lunch break. (Id. ¶ 18.) During the lunch period on September 24, 2020, Tucker "quote-tweeted" a video of a driver trapped in a crowd of rioters, and this led to an exchange with McGuire, who believed that the rioters should have damaged the car and harmed the driver. (Id. ¶¶ 20-21.) McGuire informed Principal Tinka about the exchange, and despite believing Tucker's tweets to be a violent threat, Tinka did nothing about it for the next six weeks. (Tinka Dep. 16:7-10.)

School returned to in-person classes on November 2, 2020, and that day Principal Tinka forced Tucker to unlock his phone, delete his tweets, and apologize to Walsh. (Pl.'s Compl. ¶¶ 24-25.) Tucker partially complied; he apologized and deleted the one tweet that included profanity. (Id. ¶ 27.) Because he did not delete

the rest of the tweets, Principal Tinka suspended Tucker for ten days and removed him from sports teams and student council. (Id. ¶ 28.) She threatened to expel Tucker if he tweeted about Walsh, other DCSD employees, or Antifa again; Principal Tinka did not punish any other student. (Id. ¶¶ 28-29.)

ARGUMENT

The Court should grant Tucker’s motion because there is no genuine dispute as to any material fact, and Tucker is entitled to judgment as a matter of law. The standard of review for a Fed. R. Civ. P. 56(c) motion for summary judgment is that there is no genuine issue of material fact. “Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial. The mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S. Ct. 2548 (1986). When ruling upon such a motion, a trial court must presume that all the factual allegations of the complaint are true and draw all reasonable inferences in favor of the nonmoving party. *Lujan v. Nat’l Wildlife Fed’n*, 497 U.S. 871, 110 S. Ct. 3177 (1990). “When opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment.” *Scott v. Harris*, 550 U.S. 372, 127 S. Ct. 1769 (2007).

Tucker respectfully submits that Defendants cannot bring a private right of action for negligence against the school. Because there is no genuine difference in fact, Defendants violated Tucker's rights and the Court must rule in Tucker's favor.

I. The Court must grant the motion for summary judgment in favor of Tucker because his speech was not in a school setting, so their discipline interferes with parental rights to regulate their children's behavior.

The school exceeded their power to restrict student speech by attempting to regulate Tucker's tweets from home. Not only is the school overstepping the limitations of what they can punish in Tucker's case, but their punishment also interferes with the rights of parents to regulate the behavior of their children in their own home. Tucker published his tweets at home, when he was on a personal Zoom link. His tweeting did not take place at school, was not connected with the school and does not qualify as speech that Defendants can prohibit under the law.

A. The speech did not take place on campus.

Defendants cannot penalize Tucker for what he said at home. In *Layshock v. Hermitage School District*, a school district punished a student for creating a fake Internet profile of his principal. The court unanimously said that the First Amendment precluded the district from extending its authority into the home, and that the district was not empowered to punish his expression under the circumstances outside of school. 650 F.3d 205, 2011 U.S. App. LEXIS 11994. The foundational case regarding student speech, *Tinker v. Des Moines Indep. Cmty. Sch.*

Dist., only applies to speech in school. 393 U.S. 503, 89 S. Ct. 733 (1969). The Supreme Court has not applied *Tinker* to speech at home. Here, Tucker posted the particular tweet in question in his home, when class was not in session, on a Zoom call that he created himself (Pl.’s Compl. ¶ 22.) rather than one created by the school. Every part of the speech is disconnected from the school.

B. The speech did not take place at a school-sanctioned event.

Tucker’s home does not satisfy the requirements to be a school-sanctioned event, which means that the school cannot restrict Tucker’s speech even if this restriction comes from a legitimate pedagogical concern. A school-sanctioned event is one that the school expressly or tacitly authorizes, and that criterion cannot logically apply to ordinary daily residence in a private home. In *Morse v. Frederick*, the Supreme Court allowed a school to suspend a student who brought to a school-sponsored and school-supervised event a banner that appeared to support illegal drug use, because the Court believed that there was a compelling interest in stopping student drug use that overrode the students’ right to free speech. 551 U.S. 393, 127 S. Ct. 2618 (2007). The purpose for the rulings in *Tinker* and *Morse* is to minimize disruption to the school environment. When the speech takes place somewhere not under the aegis of the school, the restrictions based on compelling interest are no longer relevant because the school environment is not disrupted. Parents, not the school, are responsible for children’s behavior at home. Because the school does not have authority over Tucker’s home, they cannot restrict his speech within it.

C. Zoom does not extend school into the home.

To say that the home is a school environment because it is the location from which Tucker accesses his classes by Zoom is a gross overextension of the school's power to restrict student speech. The logical conclusion to that argument is that everywhere from which a student accesses a Zoom class is a school environment. Not only does that argument completely erase the concept of private property ownership, it infringes on student's First Amendment rights. The temporary disruption of the school setting due to the COVID-19 pandemic does not alter the fundamental right of parents to control their home setting.

Though Zoom is too new for specific precedent, when it comes to any sort of online presence courts have applied the *Tinker* and *Morse* standards, focusing on the effects that the speech has on the school environment. In *Wynar v. Douglas County Sch. Dist.*, when a student sent instant messages from his home to his friends threatening to shoot classmates, the court said that the school could discipline him without violating the student's First Amendment rights because the student's identifiable threats met the *Tinker* "substantial disruption" requirement. 728 F.3d 1062, 2013 U.S. App. LEXIS 18056, 2013 WL 4566354. In *J.S. v. Bethlehem Area Sch. Dist.*, when a student made a website with derogatory comments towards the principal and math teacher, and solicited funds to kill the math teacher, the court ruled that the school's discipline did not violate the student's rights because the website was a "true threat" that created a substantial disturbance to the school's function. 569 Pa. 638, 807 A.2d 847 (2002). Defendants

have offered no proof that Tucker's speech was a true threat that caused a substantial disruption to the school, and their actions suggest the opposite is true. Principal Tinka punished Tucker to "lower the temperature in the building" due to the "political rift" between the students, but she received no reports of students fighting during Zoom class time that would warrant her punishment. (Tinka Dep. 16:21-23; 17:9.) Defendants admit that they cannot prove a substantial disturbance to school function, so by punishing Tucker they exceed the limitations of *Tinker*.

D. By punishing Tucker for his speech at home, Defendants interfered with the superior rights of parents to regulate the behavior of their children in their home.

When Defendants punished Tucker for something he did at home with no connection to the school, they overreached their power to control students' behavior and acted in loco parentis. Parents have a right to raise their children as they believe is proper, and for the school to punish children for their speech outside the school's established limitations violates that right.

Because they receive government funding, public schools naturally have an interest in inculcating particular values in children to create a stable and productive society. Extending the right to enforce these values cannot override the rights of parents to control the values that they hold at home and want to develop in their own children. In *Ginsberg v. New York*, regarding the sale of magazines that were deemed obscene for children but not for adults, the court said that the state has an interest in protecting child welfare but that "constitutional interpretation

has consistently recognized that the parents' claim to authority in their own household to direct the rearing of their children is basic in the structure of our society." 390 U.S. 629, 88 S. Ct. 1274 (1968). The Supreme Court in *Ginsberg* quoted *Prince v. Massachusetts*, "It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder." 321 U.S. 158, 64 S. Ct. 438 (1944) at 566.

Because of this parental autonomy, the Supreme Court said that while the state can try to protect minors from harmful material by barring the sale of explicit magazines to children directly, this prohibition does not bar parents from buying the magazines for their children. The state, and by extension the public school, has a role to play in children's development of values and virtue, but by law that role cannot supersede that of the parents. It is up to Tucker's father, not Defendants, to regulate what Tucker says on the Internet.

E. Schools are limited in their ability to regulate students' personal social media.

Because Tucker's tweets did not meet the *Tinker* requirements, Defendants cannot regulate what he tweets on his personal account outside of school. When in *Longoria v. San Benito Consol. Indep. Sch. Dist.* a school removed a student from the cheerleading squad for "liking" and posting inappropriate posts on social media, the court said that online lewd speech posted off-campus during non-school hours does not qualify under *Tinker* and "the speech is presumed protected absent facts to

show the officials could reasonably forecast a substantial disruption”. Civil Action No. 1:17-cv-00160, 2018 U.S. Dist. LEXIS 186490 (S.D. Tex. Oct. 31, 2018). The court said that if the social media posts were to be punishable, the basis for that punishment would be the standard in *Tinker*. We have established that there is no factual evidence for the school to claim a substantial disruption, so Defendants have no basis from *Tinker* upon which to punish Tucker for his personal social media posts.

Defendants further cannot punish Tucker because his speech also does not qualify under the exception to *Tinker* set in *Bethel School District v. Fraser*; when the school punished a student for giving an explicitly sexual speech at school, the Supreme Court said that schools can punish student speech that, among other elements described below, occurs before a captive audience. 478 U.S. 675, 106 S. Ct. 3159 (1986). There is no captive audience to his tweet. If a school cannot punish the speech because there is no captive audience on campus, Justice Brennan explicitly said that the school cannot punish the same speech occurring off campus. *Id.* at 688 (Brennan, J., concurring) (citing *Cohen v. California*, 403 U.S. 15 (1971)).

The Internet is not a captive audience, and neither is anyone who reads Tucker’s tweets. Punishing Tucker for these tweets, which did not take place on campus nor were intrinsically connected with the school itself in any way, overreaches the school’s power to restrict student speech that is not supported by the courts. Because Tucker’s speech was not at school or at a school sanctioned event, and because it does not fit the captive audience requirement for punishable

speech, Defendants do not have disciplinary power over Tucker's speech and the Court must grant summary judgment in Tucker's favor.

II. The Court must grant the motion for summary judgment in favor of Tucker because, even if Defendants had the right to regulate Tucker's speech, they still infringed upon Tucker's First Amendment rights.

Even if Tucker's tweets could be considered "in-school speech", they produced no substantial disruption nor did it fit any of the exceptional circumstances through which the school can restrict speech, so Defendants violated Tucker's rights by punishing him and forcing him to delete his tweets. In the case *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, where students were suspended from school for wearing armbands in protest of the Vietnam War, the Supreme Court said that schools could only regulate in-school speech if it "materially and substantially [disrupts] the work and discipline of the school." 513, 89 S. Ct. 733, 21 L. Ed. 2d 731. *Fraser* provided an exception to *Tinker*: schools can regulate speech even absent substantial disruption, so long as 1) there is a captive audience, 2) the school needs to dissociate itself from the speech, and 3) the speech involves lewd or indecent sexual content. Assuming that Defendants have the right to regulate online and off-campus speech, Tucker's tweets still do not fulfill these criteria, so forcing Tucker to delete his tweets violated Tucker's First Amendment right to free speech.

A. Tucker's speech did not materially and substantially disrupt the school

environment.

Tucker's tweets do not qualify as something that the school can restrict under *Tinker* because the school cannot prove that the tweets created a substantial disruption. Principal Tinka says that the student fighting and "radicalizing over the summer ended with Sidney threatening Officer Walsh," on September 24. (Tinka Dep. 9:14, emphasis added.) Any fighting outside of the school year is by definition outside the school environment, so the time period in which Tucker's tweet could have materially and substantially disrupted the school environment is between the first day of school (September 7) and September 24. However, by the principal's own admission, there were no reports of fighting between the students, and that there were few opportunities for students to interact at all: the classes were "mostly teacher lecture with student questions and answers." (Tinka Dep. 18:1-3, 18:9.) Principal Tinka explicitly says that there was little opportunity for infighting during class. (Tinka Dep. 18:5.) Because all this evidence indicates a lack of the necessary disruption that would allow the school to punish Tucker under *Tinker*, Defendants exceeded their authority to regulate student speech.

B. Tucker's speech did not threaten to materially and substantially disrupt the school environment.

Tucker's tweets could not reasonably be considered to threaten a school disruption because his tweet did not create any effect other than a singular opposing response. This is further supported by Principal Tinka's own considerations and priorities in discipline. While the courts have not specifically

defined “substantial disruption,” in *J.C. v. Beverly Hills Unified Sch. Dist.*, the court said that a “general buzz” -- merely overhearing discussion between students about a YouTube video -- did not fulfill this criterion. 711 F. Supp. 2d 1094 (C.D. Cal. 2010). In *Cuff v. Valley Cent. Sch. Dist.*, the court considered a six year old’s history of violent drawings and behavior issues, culminating in a drawing expressing a wish to blow up the school, to qualify as a substantial disruption despite the fact that the impact to the students was also effectively a general buzz. 677 F.3d 109 (2d Cir. 2012). Both of these decisions focus more on the effect relative to the group; kindergarteners are more easily upset than high schoolers. Based on that standard for understanding substantial disturbance, the evidence indicates that no such disturbance occurred here. If the only response to Tucker’s tweet was McGuire’s Exhibit E threat to “tell everyone how disgusting you are,” then this outcome seems much more in the line of the *J.C. v. Beverly Hills* general buzz and therefore not a threat of a material and substantial disturbance. Principal Tinka claimed that Tucker’s tweet was a violent threat and punished him accordingly, but the fact that she waited about six weeks to actually get around to addressing this supposed violent threat indicates that this was not a real threat of substantial disruption of the school. (Tinka Dep. 16:7-10.)

C. There was no captive audience to Tucker’s speech, nor was there any need for the school to dissociate from it.

As discussed previously, the Internet is not a captive audience and neither is anyone who reads Tucker’s tweets, so the first criterion cannot apply. Additionally,

no one could reasonably associate Defendants with Tucker's September 24 tweet. The only connection between the school and the tweet was the mention of Officer Walsh, and even then Tucker was not referring to Walsh in her capacity as an employee of the school, but rather as just another supporter of BLM. Principal Tinka claimed that Tucker's tweets were interfering with Walsh's safety as an officer at the school, but that statement contradicted the rest of her deposition in which she said that Walsh's work was not impacted by Tucker's tweets. (Tinka Dep. 18:10-23.) Furthermore, Tucker posted the tweet not while on a school Zoom link but rather on a separate link that he created. (Pl.'s Compl. ¶ 22.) Therefore, Tucker's tweets should be considered ordinary speech at home over which Defendants have no authority.

D. Tucker's speech did not involve lewd or sexual content, but even if it did the school cannot punish him because *Tinker* does not apply to it.

Tucker's final September 24 tweet, while profane, did not contain lewd or sexual content. *R.O v. Ithaca City Sch. Dist.*, in discussing publication of material in the student-run "open-forum" newspaper, relied on Merriam-Webster's definition of "lewd" as "inciting to sensual desire or imagination." No. 5:05-CV-695 (NAM/GJD), 2009 U.S. Dist. LEXIS 130993 (N.D.N.Y. Mar. 23, 2009). None of the parties involved with this tweet interpreted it in this way; McGuire and Principal Tinka both saw it as a violent threat rather than anything sensually imaginative, and Defendants punished Tucker for "threatening Officer Walsh." (Tinka Dep. 17:5.) The courts have also established that the *Fraser* "plainly offensive" standard is too

broad. When it came to *Guiles v. Marineau*, in which a school forced a student to cover images on his shirt, the court said:

“We doubt the *Fraser* Court's use of the term sweeps as broadly as this dictionary definition, and nothing in *Fraser* suggests that it does. But if it does, then the rule of *Tinker* would have no real effect because it could have been said that the school administrators in *Tinker* found wearing anti-war armbands offensive and repugnant to their sense of patriotism and decency. Yet the Supreme Court held the school could not censor the students' speech in that case.” 461 F.3d 320 (2d Cir. 2006)

If the courts were to apply *Fraser* to everything offensive that conflicts with schools' educational missions, then *Tinker* would be a useless standard and schools could censor anything they pleased. This would completely dissolve students' First Amendment rights. *Guiles* and others have interpreted the *Fraser* offensiveness exception to apply to speech that is “imbued with sexual references, bordering on the obscene.” *Id.* at 461 F.3d. at 328. Tucker's tweet is certainly in poor taste, but not only was it not imbued with sexual references, no one interpreted it that way either.

Because the *Fraser* exception does not apply to the tweet, the only restriction that the school could apply is *Tinker*. We have established above that *Tinker* does not work because the tweet did not cause a substantial disturbance. Because Defendants cannot lawfully restrict Tucker's speech, their punishment violated Tucker's rights and the Court must grant summary judgment in his favor.

III. The Court must grant the motion for summary judgment in favor of Tucker because Defendants deprived him of his rights to due process.

A. Defendants selectively applied due process and punishment.

McGuire's tweets were just as violent and provocative as Tucker's, if not more so, yet McGuire received no punishment. The Madrid Student Handbook says that the due process procedures are applied equally to all, which is the opposite of what actually happened. Assuming that Defendants had the power to regulate student speech as described above, if they were to truly follow the handbook and uphold the administrative due process that they claim is in place for the protection of students' rights, they would have assessed McGuire's tweets under the *Tinker* standard. McGuire's tweet that protestors should have popped the car tires and dragged the driver bodily from his car can be fairly interpreted as advocating damage to property and bodily harm, which is far more aggressive than Tucker's blasé "whatever happens, happens." Tucker explicitly said that he did not want Walsh to get hurt, but McGuire encouraged protestors to actively harm those that oppose them through a double standard: it is fine for those opposing murder to murder the people that oppose them, according to the logic of her tweet. It is difficult to imagine something more materially and substantively disruptive to the school environment than hypocritical bloodthirst, and the fact that McGuire faced no consequences indicates a tremendous misapplication of due process.

B. Defendants did not follow the handbook in punishing Tucker.

Defendants violated the tenets of their due process guidelines when they punished Tucker, and the rationales from the handbook that they gave for his punishment do not apply. The handbook says that students will be given timely and adequate notice as well as opportunity to prepare a defense, and this did not occur. Instead, six weeks after Tucker's tweet, on the first day of in-person classes, Principal Tinka ordered Tucker to take down his tweets and punished him for insubordination when he only deleted the profane one. As mentioned above, Principal Tinka had no legal authority to restrict his speech in this way and Tucker was under no legal obligation to comply.

Principal Tinka punished Tucker for violating sections 3, 4, 11, 15, 16, 22 and 29 of the Student Code of Conduct. (Tinka Dep. 21:6.) Regarding § 3, Tucker deleted the tweet at her request, so he was in compliance. He therefore did not violate § 4, insubordination, but still the directions of school personnel violated his First Amendment rights so Defendants were in the wrong. Since Walsh is not properly considered school personnel but rather an officer employed through the sheriff's department, Tucker's tweet does not technically qualify as a violation of § 11. The facts indicate that Tucker did not violate § 15. Even if we assume that Walsh is a member of the school staff, Tucker still deleted the profane tweet, which would remove his violation of § 16. Section 22 does not apply because Tucker tweeted from home and not on class time. Lastly, Tucker exhibited no persistent disobedience or gross misconduct. Tucker's conduct neither violates criminal law nor is inherently contrary to school educational mission, so he did not violate § 29. When comparing

the rules of the handbook with Tucker's actual behavior, it becomes clear that Tucker never violated several sections in the first place, and quickly rectified the ones that he did, which means that his punishment was undeserved and unjust.

C. Defendants did not give Tucker a hearing before suspending him and forcing him to delete his tweets; the suspension inherently denied Tucker his right to education.

Principal Tinka took advantage of her position of power and violated Tucker's rights under the guise of a "friendly chat." She did not give him a hearing or the opportunity to prepare a defense. Principal Tinka summoned Tucker to her office on the first day of in-person school and ordered him to violate his free speech rights by deleting his tweets. As discussed above, Defendants did not have the authority to restrict Tucker's speech, including forcing him to delete his tweets that were out of Defendants' legal purview and forbidding him to tweet in the future. When Tucker only partially complied, Principal Tinka suspended him from school for ten days and removed him from student council and sports teams. In the same conversation, Principal Tinka threatened him with expulsion if Tucker were to tweet again about Antifa, Walsh, or other DCSD employees (Pl.'s Compl. ¶ 29), though Principal Tinka claimed under oath that she did not say this explicitly. (Tinka Dep. 24:7-14.) All of this violates Tucker's constitutional rights and his rights as a Madrid student under the Student Code of Conduct.

CONCLUSION

Defendants wrongly punished Tucker. They overstepped their authority to regulate student speech by punishing him for what he said at home, they penalized him for speech beyond the limits of what the law permits, and the punishment that they applied violated due process and Tucker's constitutional rights. For these reasons, Tucker respectfully requests that the Court grant his motion for summary judgment in his favor.

Respectfully Submitted,

Mercer Barrister
3510286
11062 East Blvd.
Cleveland, OH 44132
(555) 618-3023
ATTORNEY FOR PLAINTIFF
SIDNEY TUCKER

CERTIFICATE OF SERVICE

A copy of the foregoing PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT and PLAINTIFF'S BRIEF IN SUPPORT OF HIS MOTION FOR SUMMARY JUDGMENT was served upon Schuyler, Laurens, and Mulligan, 1808 Madison Avenue, Cleveland, Suite 1780, Dusselberg, RS 99726 Counsel for Defendants Doubleton County School Board and Principal Tinka, this 5th day of March, 2021.

Mercer Barrister
3510286
11062 East Blvd.
Cleveland, OH 44132
(555) 618-3023
ATTORNEY FOR PLAINTIFF
SIDNEY TUCKER

Applicant Details

First Name	Kristina
Last Name	Taylor
Citizenship Status	U. S. Citizen
Email Address	krtaylor@my.loyno.edu
Address	<div> <div>Address</div> <div> <div>Street</div> <div>4002 Canal Street</div> <div>City</div> <div>New Orleans</div> <div>State/Territory</div> <div>Louisiana</div> <div>Zip</div> <div>70119</div> <div>Country</div> <div>United States</div> </div> </div>
Contact Phone Number	8502404875

Applicant Education

BA/BS From	University of West Florida
Date of BA/BS	May 2019
JD/LLB From	Loyola University New Orleans College of Law
	http://www.loyno.edu/lawcareers/
Date of JD/LLB	May 13, 2023
Class Rank	20%
Does the law school have a Law Review/Journal?	Yes
Law Review/Journal	No
Moot Court Experience	Yes
Moot Court Name(s)	Constitutional Criminal Procedures Competition

Bar Admission

Prior Judicial Experience

Judicial Internships/Externships **Yes**

Post-graduate Judicial Law Clerk **No**

Specialized Work Experience

Professional Organization

Organizations

Martinet Legal Society

Recommenders

Wheeler, Adrienne
awheeler@louisianaappleseed.org
504-910-1767

Garda, Robert
rgarda@loyno.edu
504 861 5994

Blevins, John
jblevins@loyno.edu

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Kristina R. Taylor

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U.S. District Court
1100 Commerce Street, Room 1567
Dallas, Texas 75242

RE: Law Clerk

Dear Honorable Judge Irma C. Ramirez,

I am writing to express my interest in a judicial clerkship in your chambers beginning in August of 2023. Currently, I am a 3L at Loyola University New Orleans College of Law. My desire to pursue a clerkship in your courtroom following my graduation lies in my desire to further my legal research and writing skills and extend my time in the courtroom. Although I am originally from Florida and attend law school in Louisiana, I am very flexible about post-graduation locations.

I am currently ranked in the top 18% of my class and am an active member of both the Moot Court and Trial Advocacy Teams, having competed as a student trial advocate since the fall of my 2L year. I have competed in two mock trial competitions since the fall of my 2L year. I was also selected as a Student Practitioner in the Family Law Legal Clinic at Loyola this Fall. In addition to this practical experience, I have continued to sharpen my research/writing skills by working as a research assistant to a research and writing/administrative law professor.

This past summer, I clerked for the Honorable Ivan Lemelle, an esteemed judge presiding under the United States District Court for the Eastern District of Louisiana. While clerking for Judge Lemelle I gained valuable experience within the judicial system through courtroom observation and opinion drafting experience. I observed oral arguments, bench trials, sentencings, pre-trial conferences, and jury trials. My legal research resulted in various memorandums on complex cases set on Judge Lemelle's docket. His docket included subject matter from habeas corpus petitions to complex civil matters such as asbestos liability litigation. Additionally, I had the opportunity to work under another esteemed judge, the Honorable Nakisha Ervin-Knott. I externed for judge Knott during the fall of my 2L year, where I observed civil matters in the Orleans Parish Civil District Court. This experience allowed me to research and write proposals to the judge regarding different matters on her docket. Moreover, I had the ability to present my proposals to the judge and discuss the cases on her docket.

This past summer, I also worked as a Summer Associate for The Kullman Firm and Leake and Anderson L.L.P. At Leake and Anderson L.L.P. I researched and wrote memoranda pertaining to a wide array of civil matters, such as trucking accidents, insurance, and personal injury. At

Kullman, I conducted in-depth legal research and wrote memoranda concerning the Fair Labor Standards Act, worker's compensation, and employment discrimination. During both positions, I had the opportunity to observe oral arguments, depositions, and client meetings. Additionally, I was able to work with case management programs and became familiar with electronic filings. Both experiences gave me a unique practical and strategic perspective of the litigation world.

My professional experiences have afforded me a solid foundation for a clerkship in your chambers, and I hope to continue my legal career by serving under your leadership next fall. Thank you for considering my application, and I hope to hear from you soon.

Sincerely,

Kristina R. Taylor

Kristina R. Taylor

4002 Canal Street Apt. D New Orleans, LA 70119
(850) 240 – 4875 | krtaylor@my.loyno.edu

EDUCATION

Loyola University New Orleans College of Law, New Orleans, Louisiana

Juris Doctor Candidate, May 2023 Common Law
G.P.A. 3.55 Overall Class Rank: Top 18% (31/181)

Honors and Activities

Earned an “A”: Lawyering I & II (Legal Research & Writing); Constitutional Law; Constitutional Criminal Procedure; Administrative Law, Advanced Constitutional Law: 14th Amendment
Moot Court, Staff Member
Trial Advocacy, Staff Member
Loyola Trial Advocacy Intermural Competition, Winner
Black Law Student Alliance, Student Bar Association Representative 2021-2022
Semora “Lola” Davis Scholarship Recipient

University of West Florida, Pensacola Florida

Bachelor of Science in Political Science/Pre-Law, May 2019

Honors & Activities

Dean’s List and President’s List
Donald J. Weidner Summer for Undergraduates at Florida State Law School, Participant
Moot Court Society, Vice President
Student Government Association, Election Committee
Alpha Kappa Alpha Sorority Incorporated, Member

LEGAL EXPERIENCE

Stuart H. Smith Law Clinic & Center for Social Justice, New Orleans, Louisiana

Student Practitioner – Children’s Rights Clinic, August 2022-May 2023; 15 Hours/Week

- Sworn into the limited practice of law pursuant to Rule XX of the Louisiana Supreme Court
- Researching and drafting memoranda, motions, appeals, and other court documents on behalf of minor clients
- Arranging and conducting extensive client interviews and depositions regarding complex family issues and factual allegations
- Appearing at hearings and court proceedings at least twice a month to present oral arguments on behalf of clients

Loyola University New Orleans College of Law, New Orleans, Louisiana

Research Assistant, August 2022-May 2023; 12 Hours/Week

- Reviewing and editing final section drafts for the publication of an Administrative Law Hornbook
- Researching past and current issues within Administrative Law, particularly the Major Questions doctrine, to analyze the importance in future Supreme Court decisions
- Formulating research on the development of reliance interest within rulemaking proceedings and formulating potential abstracts

The Kullman Firm, New Orleans, Louisiana

Summer Associate, June 2022 – August 2022; 40 Hours/Week

- Drafted state survey memoranda outlining issues regarding various employment law claims within different states
- Advised clients about state and federal employment law and action steps for work relations
- Researched defenses for potential claims and presented these arguments to senior attorneys
- Attended depositions, hearings, and professional social events

Kristina R. Taylor

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Honorable Ivan Lemelle, United States District Court Eastern District of Louisiana, New Orleans, Louisiana

Judicial Intern, May 2022 – June 2022; 32 Hours/Week

- Reviewed Reports and Recommendations from Magistrate Judges that either granted or denied habeas corpus relief to defendants and objections to these reports
- Researched and drafted bench memorandums that either adopted or denied the Magistrate Judges Report and Recommendation
- Observed pretrial conferences, oral arguments, sentencings, and trials
- Conducted intensive research and writing on federal procedure and determining whether a case followed the Federal Rules of Civil Procedure

Leake & Anderson, L.L.P., New Orleans, Louisiana

Summer Associate, May 2022 – June 2022; 10 Hours/Week

- Reviewed case facts with attorney team to develop strategies for litigation
- Prepared motions and memoranda concerning issues involving trucking accidents, insurance coverage, breach of contract claims, and other civil matters
- Attended court proceedings, settlement conferences, and depositions

Honorable Nakisha Ervin-Knott, Civil District Court, New Orleans, Louisiana

Judicial Intern, August 2021- December 2021; 10 Hours/Week

- Reviewed pleadings submitted by parties, conducted extensive research in multiple areas of law, and drafted memoranda summarizing facts, issues, and case law for the judge's review
- Observed bench and jury proceedings and pre-trial conferences
- Conducted one on one meetings with the judge to discuss upcoming cases and reviewed recommendations on motions submitted by parties

Louisiana Appleseed, New Orleans, Louisiana

Law Clerk, May 2021-August 2021; 40 Hours/Week

- Conducted in depth research on heirs' property and disproportionate effects on marginalized communities
- Compiled data over multi state driver license suspension laws to help legislate less restrictive laws for suspended drivers' licenses within Louisiana
- Strategized with pro bono attorneys to create projects that tracked down potential heirs' property within New Orleans District C
- Organized panel events to assist individuals who lost their heirs property through forced sales

Levin Papantonio Law Firm, Pensacola, Florida

Litigation Assistant, May 2019-August 2020; 40 Hours/Week

- Retrieved medical records from patient providers to review potential personal injury claims
- Assisted attorneys with contacting clients to gain information for potential personal injury claims
- Helped file complaints with the appropriate courthouse for personal injury clients
- Allocated distribution sheets and settlement checks to mass torts clients

Escambia County Clerk of the Clerk, Pensacola, Florida

Student Assistant, December 2019-May 2019; 20 Hours/Week

- Verified confidential documents daily to ensure presence within county security system
- Organized client files dating back from the 1970's to maintain a proper work environment
- Observed family court proceedings to ensure paperwork was completed by parties

OTHER PROFESSIONAL EXPERIENCE

Families First Network, Pensacola, Florida

Kristina R. Taylor

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(850) 240 – 4875 | krtaylor@my.loyno.edu

Family Support Worker, June 2018-January 2019; 40 Hours/Week

- Collected legal documents from case managers to process through the local court system database
- Submitted monthly evaluations of fostered youth to the local dependency court
- Assisted families by providing information and arrangements for social services, medical assistance, education, employment and training, daycare services, and housing
- Counseled over 50 young adults through bi-weekly skills training and mentoring sessions

CIVIC INVOLMENT

Big Brother, Big Sister, Mentor
Children's Home Society of Florida, Advocacy Committee

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January 10 2023

Professional Academic Record

Ms. Kristina R. Taylor

4002 Canal St

Apt D

New Orleans LA 70119

0330847

SSN: XXX-XX-7881

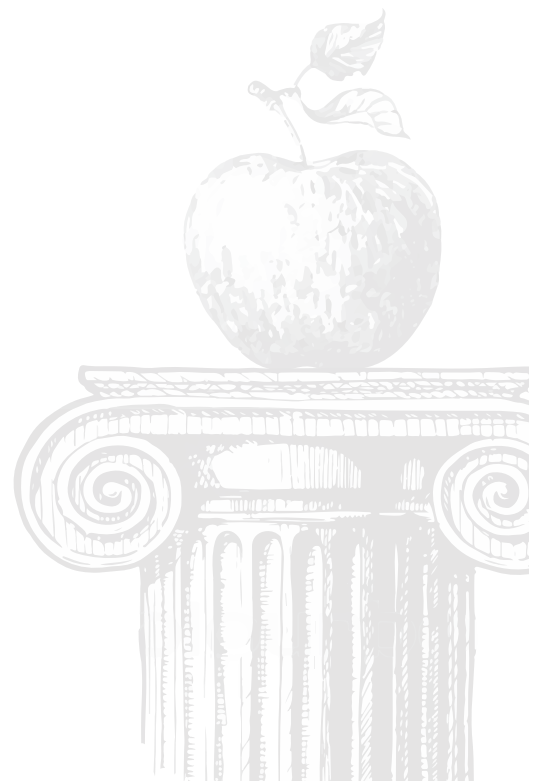
Birth Date: 12/03

				GRD	ATT	CMPL	QUAL	PTS	GPA
2020FA	LAW	L705	Torts I	C-	3.00	3.00	3.00	5.10	
	LAW	L715	Lawyering I	A	3.00	3.00	3.00	12.00	
	LAW	L725	Civil Procedure I	B+	3.00	3.00	3.00	9.90	
	LAW	L735	Criminal Law	C+	3.00	3.00	3.00	6.90	
	LCOM	L700	Contracts I	A-	3.00	3.00	3.00	11.10	
			Term Totals		15.00	15.00	15.00	45.00	3.000
			Cumulative Totals		15.00	15.00	15.00	45.00	3.000
2021SP	LAW	L710	Torts II	B+	2.00	2.00	2.00	6.60	
	LAW	L730	Civil Procedure II	B+	3.00	3.00	3.00	9.90	
	LAW	L765	Lawyering II	A	3.00	3.00	3.00	12.00	
	LCOM	L701	Contracts II	B+	3.00	3.00	3.00	9.90	
	LCOM	L705	Common Law Property	B+	3.00	3.00	3.00	9.90	
			Term Totals		14.00	14.00	14.00	48.30	3.450
			Cumulative Totals		29.00	29.00	29.00	93.30	3.217
2021FA	LAW	L750	Constitutional Law	A	4.00	4.00	4.00	16.00	
	LAW	L760	Evidence	B+	3.00	3.00	3.00	9.90	
	LAW	L900	Academic Externship	P	2.00	2.00	0.00	0.00	
	LAW	L961	Trial Advocacy	A-	3.00	3.00	3.00	11.10	
	LCOM	L715	Wills, Trusts, and Estates	A	3.00	3.00	3.00	12.00	
			One Skills Credit Earned						
	LSKL	GEN	Wills, Trusts, & Estates Skill	P	0.00	0.00	0.00	0.00	
			Term Totals		15.00	15.00	13.00	49.00	3.769
			Cumulative Totals		44.00	44.00	42.00	142.30	3.388
2022SP	LAW	L740	Constitutional Crim. Proced.	A	3.00	3.00	3.00	12.00	
	LAW	L746	Business Organizations I	B+	3.00	3.00	3.00	9.90	
	LAW	L770	Lawyering III	A-	3.00	3.00	3.00	11.10	
	LAW	L781	Law and Poverty	B+	2.00	2.00	2.00	6.60	
	LAW	L844	Administrative Law	A	3.00	3.00	3.00	12.00	
			Term Totals		14.00	14.00	14.00	51.60	3.686
			Cumulative Totals		58.00	58.00	56.00	193.90	3.463
2022FA	LAW	L858	Environmental Law	B+	3.00	3.00	3.00	9.90	
	LAW	L877	Incarceration	A	2.00	2.00	2.00	8.00	
	LAW	L896	Arbitration and the Law	A	3.00	3.00	3.00	12.00	
	LAW	L897	Childrens' Rights Clinic	A	5.00	5.00	5.00	20.00	
	LAW	L955	Adv Con Law: 14th Amendment	A	3.00	3.00	3.00	12.00	
			Term Totals		16.00	16.00	16.00	61.90	3.869
			Cumulative Totals		74.00	74.00	72.00	255.80	3.553
2023SP	LAW	L855	Children and the Law					0.00	
	LAW	L896	Advanced Trial Advocacy					0.00	
	LAW	L897	Childrens' Rights Clinic	A	5.00	5.00	5.00	20.00	
	LCOM	L950	Bar Prep II: Common Law					0.00	
			Term Totals		5.00	5.00	5.00	20.00	4.000
			Cumulative Totals		79.00	79.00	77.00	275.80	3.582



Louisiana
APPLESEED

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COLLEGE OF LAW

Law Faculty

Robert A. Garda

Fanny Edith Winn Distinguished Professor of Law

November 23, 2022

RE: Recommendation of Kristina Taylor

To Whom it May Concern:

I write to recommend Ms. Kristina Taylor for a judicial clerkship. I taught Kristina in Contracts I, Contracts II, and Fourteenth Amendment. I know Kristina only from our classroom interactions and am certain that she will make an excellent judicial clerk because she is smart, mature and hard-working.

Kristina's analytical abilities are superb. Her stellar performance in law school does not capture her true abilities. In class, Kristina synthesizes cases quickly and comprehends the not just the express holding but the underlying rationales and policies. She grasps the nuances and practical implications of cases and statutes with ease and can articulate them clearly and concisely. Her comprehension of materials is so strong that I count on her participation in class to advance the understanding of all of her classmates. Her numerous questions and comments in class set a very high bar of understanding for her classmates.

Even more important, Kristina is a tireless worker. She approaches law school as a mature professional. She's respectful, earnest, and sets the participation bar in the classroom very high. She is not just prepared for every class – she comes to class understanding the materials and has questions about the few things she does not understand. She will not simply want to be a great clerk, she will want to be the best clerk – and she will put full effort into attaining that goal. Her intelligence, ambition and work ethic convince me she will excel at any endeavor she puts her mind to.

Finally, Kristina brings a unique perspective to the classroom and legal analysis. She is happy to share her experiences as an African American woman and use that background to contextualize legal doctrines. But most remarkably, she is able to discuss these issues in a way that makes her classmates comfortable and engaged. Discussions of racial and gender discrimination are often stilted and awkward, particularly in a diverse classroom. Kristina has strong opinions – and experiences – but shares them in a way that advances the conversation and encourages others to engage in meaningful discussions. Her ability to understand, confront and articulate racism and sexism without making others uncomfortable is a unique skill.

In sum, Kristina will be an excellent clerk because she will accept nothing less from herself. She has the intellect, work ethic, maturity and drive to accomplish this goal. It is without reservation that I recommend Ms. Kristina Taylor to you.

Sincerely,



Robert Garda
Professor of Law

February 07, 2023

The Honorable Irma Ramirez
Earle Cabell Federal Building and
United States Courthouse
1100 Commerce Street, Room 1567
Dallas, TX 75242

Dear Judge Ramirez:

This letter is to recommend Ms. Kristina Taylor for a clerkship with your chambers. Quite simply, Kristina has one of the best work ethics I have ever seen in a law student. Her hard work has allowed her to excel in law school while simultaneously balancing numerous work and student organization activities. She is also an excellent writer. I strongly recommend her.

I am a Professor at Loyola University New Orleans College of Law, and I had the pleasure of teaching Kristina in multiple classes including Lawyering I and Administrative Law. She performed very well in these classes, earning an A in both (which is the highest possible grade). One particularly noteworthy thing about Kristina that I remember is how closely she listened to instruction and feedback. When I gave her comments on early assignments, she very quickly incorporated those lessons and improved on the next versions. I was always very impressed with the structure and clarity of her writing during my Lawyering class. These skills will serve her well in your chambers.

It is also telling, but no accident, that Kristina's highest grades have come in the most demanding classes. First, Kristina has excelled in our Lawyering classes, earning A grades in each. As I can attest from teaching these classes, success in Lawyering requires not only strong writing and research skills, but also the willingness to put in a lot of time and hard work. In addition, the doctrinal courses in which she has earned A grades are some of the most difficult in all of law school—Constitutional Law, Administrative Law, and Constitutional Criminal Procedure. To succeed in these courses is a testament to her willingness to put in the necessary time to master the material.

Kristina has maintained her academic success while also being active in the College of Law's student organizations and culture. She is a member of both the Moot Court and Trial Advocacy teams. It is unusual for students to belong to both organizations given the time each requires. She is also an elected representative from the Black Law Student Alliance (BLSA) to our Student Bar Association, which illustrates the esteem in which her fellow students hold her.

Kristina also has an extensive and impressive set of work experiences in the legal profession that will help her be prepared from day one as a judicial clerk. For instance, she has already served as an intern to the Honorable Ivan Lemelle in the Eastern District of Louisiana. In her short time in law school, she has also worked for several law firms and judges as either a summer associate or intern. Most recently, she is working as a research assistant for a visiting faculty member who is writing an administrative law hornbook. To be honest, I am not sure how she has the time to complete everything so well, but she always does.

On a personal level, Kristina is a pleasure to be around. I have always found her to be a very engaged, inquisitive, and mature law student. I am confident that she can perform any task asked of her. She would also get along well with everyone in your chambers. In short, she's great. She would be a great addition and I strongly recommend meeting her to see for yourself.

Thank you for your consideration of this recommendation letter. If you have any questions regarding this letter, please do not hesitate to contact me (e-mail: jblevins@loyno.edu; phone: 504.861.5853).

John Blevins - jblevins@loyno.edu

weapons charges (Counts 1 and 2) had been nolle prossed, and likewise, claims that “without weapons charges, the factual foundation for the Obstruction of Justice Charge vanishes, and nothing remains but the Petitioner discarding a non-weapon in his criminal case. Hence, no basis exists for him to now be in prison.” Rec. Doc. 25 at 6.

On February 22, 2022, the Magistrate Judge issued a Report and Recommendation recommending that petitioner’s writ for habeas corpus relief be dismissed without prejudice. *Id.* Less than a week later, petitioner filed an objection. Rec. Doc. 26. On March 24, 2022, petitioner submitted a motion for leave to supplement his objections, which was granted by the Court on March 31, 2022. Rec. Docs. 28, 30-31. Petitioner filed another motion for leave to supplement his objections on June 22, 2022, which is currently pending before the Court. Rec. Doc. 32.

III. THE PARTIES’ CONTENTIONS

In the Magistrate Judge’s Report and Recommendation, the judge found that petitioner’s federal habeas corpus petition failed to comply with the federal exhaustion requirement. Rec. Doc. 25 at 11. The Magistrate Judge rejected both of petitioner’s arguments that: (1) The Supreme Court of the United States vacated his conviction and sentence and (2) Alternatively, if the conviction remains in effect via Count 3, it is invalid because Counts 1 and 2 were the foundation of his conviction for Count 3.

Id. at 10. The Magistrate Judge opined that the United States Supreme Court did not vacate his convictions because the Court simply remanded the case to the Louisiana Court of Appeals. *Id.* But even if the Supreme Court vacated petitioner's convictions, petitioner has not exhausted his alternative claim. *Id.* The District Attorney nolle prossed Counts 1 and 2 only two days after petitioner filed writ with the Louisiana Supreme Court. *Id.* at 11. Therefore, petitioner never afforded the court a "fair opportunity" to consider what effect (if any) the District Attorney's entry of the nolle prosequi on Counts 1 and 2 had on his conviction for Count 3. *Id.* The Magistrate Judge explained that at best, the petition is a mixed petition involving exhausted and unexhausted claims. *Id.*

Petitioner filed a formal objection to the Magistrate's Report and Recommendation. Rec. Doc. 26. He claimed that all three of his convictions and sentences were vacated by the United States Supreme Court. *Id.* at 6. Additionally, he argued that the basis for Count 3 has been eliminated by statute and by the United States Supreme Court. *Id.* at 6.

IV. LAW AND ANALYSIS

A. Standard of Review

The District Court may refer dispositive matters to a magistrate judge, who then issues a Report and Recommendation 28

U.S.C. § 636 (2022). A petitioner may file an objection to the Report and Recommendation within fourteen days. *Id.*

The Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”) controls this Court’s review of a 28 U.S.C. § 2254 habeas corpus petition. See *Poree v. Collins*, 866 F.3d 235, 245 (5th Cir. 2017) (“Federal habeas proceedings are subject to the rules prescribed by the Antiterrorism and Effective Death Penalty Act.”). If a petitioner makes a timely objection to a magistrate judge’s findings and recommendation, then the district court “shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b)(1). “A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions.” *Id.*

B. Exhaustion

1. SCOTUS Decision

One of the threshold questions in habeas review is whether the petitioner’s claims were adjudicated on the merits in state court, i.e., the petitioner must have exhausted state court remedies and must not be in “procedural default” on a claim. *Nobles v. Johnson*, 127 F.3d 409, 419–20 (5th Cir. 1997) (citing 28 U.S.C. § 2254(b), (c)); see also *Whitehead v. Johnson*, 157 F.3d

384, 387 (5th Cir. 1998) (citing *Rose v. Lundy*, 455 U.S. 509, 519-20 (1982)); *Rhines v. Weber*, 544 U.S. 269, 273 (2005). Indeed, 28 U.S.C. § 2254 states, "An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that . . . the applicant has exhausted the remedies available in the courts of the State."

The United States Supreme Court has interpreted the exhaustion requirement under 28 U.S.C.S. § 2254(b), (c) in plain and simple instruction: "before they (defendants) bring any claims to federal court, they must first have taken each one to state court." *Rose*, 455 U.S. at 510; *Rhines*, 544 U.S. at 276. The policy behind this rule is that it gives the state an "'opportunity to pass upon and correct' alleged violations of its prisoners' federal rights." *Baldwin v. Reese*, 541 U.S. 27, 29 (2004) (quoting *Picard v. Connor*, 404 U.S. 270, 276 (1971)). Once the state has had this opportunity, a prisoner has exhausted their state remedy and can possibly bring their claim to federal court. *Baldwin*, 541 U.S. at 29. However, under § 2254, a court may deny an application for a writ of habeas corpus on the merits, even if an applicant has failed to exhaust state court remedies. See 28 U.S.C. § 2254(b) (2);



A habeas claim is exhausted when the prisoner "fairly presented his claim in each appropriate state court (including a

state supreme court with powers of discretionary review).” *Baldwin*, 541 U.S. at 29, 124; *O’Sullivan v. Boerckel*, 526 U.S. 838, 845 (1999). Moreover, these claims are exhausted when the substance of the federal court claim presents the same factual and legal theories urged to the state’s highest court according to state court rules. *Dupuy v. Butler*, 837 F.2d 699, 702 (5th Cir. 1988); *Wilder*, 274 F.3d at 259 (noting all claims in a federal habeas application should have been previously assessed by a state court).

Here, the petitioner presented his first claim to the highest court in Louisiana. Rec. Doc. 25 at 10. This claim involved an assertion that the “United States Supreme Court vacated all three convictions and sentences.” *Id.* In the Report and Recommendation, the Magistrate Judge opined “arguably, that claim may be exhausted.” *Id.* at 11. The Judge based her conclusion on the Louisiana Supreme Court’s ruling, which states “[We do not agree] that the United States Supreme Court vacated all three convictions and sentences when it issued the order.” [REDACTED]

[REDACTED] (La. 2021). While the Louisiana Supreme Court ultimately denied petitioner relief, it considered the petitioner’s claim. See *Id.* Consequently, it does seem that Louisiana’s highest court had an opportunity to hear this claim, and therefore, the Magistrate Judge did not err in concluding that this claim “arguably may be exhausted.” See Rec. Doc. 25 at 11.

2. Obstruction of Justice Conviction

When a habeas petition raises arguments that differ from the state court claims, the petition contains unexhausted claims. *Whitehead*, 157 F.3d at 387; *Wilder*, 274 F.3d at 259 (“Where a petitioner advances in federal court an argument based on a legal theory distinct from that relied upon in the state court, he fails to satisfy the exhaustion requirement.”). If a petitioner brings additional evidence for a claim in the federal habeas application, that was not included in the state habeas application, then that claim is also not exhausted. See *Kunkle v. Dretke*, 352 F.3d 980, 986 (5th Cir. 2003) (ruling the federal claim was unexhausted when the petitioner provided additional affidavits and a detailed psychological report in the federal proceedings that was not provided in the state proceedings). “It is not enough that all the facts necessary to support the federal claim were before the state courts or that a somewhat similar state-law claim was made.” *Wilder*, 274 F.3d at 259; see also *Duncan v. Henry*, 513 U.S. 364, 366 (1995).

In his petition, petitioner argued that Count 3 was invalid because the dismissal of Counts 1 and 2 removed the foundation of Count 3. Rec. Doc. 25 at 10. But in her Report and Recommendation, the Magistrate Judge concluded that this claim was unexhausted. *Id.* at 11. In petitioner’s objections, he argues that Count 3 is invalid because the “facts upon which the Obstruction of Justice

Charge rest have been eliminated from the case statutorily.” Rec. Doc. 26 at 6. The Court agrees with the Magistrate Judge.

Petitioner’s claim has not been exhausted. First, the argument the petitioner presented to the Louisiana Supreme Court is not substantially equivalent to the one that is before the court now. See *Wilder*, 274 F.3d at 259. The Louisiana’s highest court, in *State v. Jones*, ruled on a specific issue, the petitioner’s interpretation of his United States Supreme Court ruling was incorrect. [REDACTED]. At the time, the District Attorney had yet to dismiss the petitioner’s convictions and sentences for Counts 1 and 2. Rec. Doc. 25 at 6. Petitioner’s current claim is based on the District Attorney’s actions having this eliminating effect on his conviction and sentence for Count 3. Rec. Doc. 25 at 8; Rec. Doc. 26 at 3. However, the District Attorney did not dismiss those counts until two days after the Louisiana Supreme Court ruling. Rec. Doc. 25 at 11. Thus, this argument was never presented to the Louisiana Supreme Court because the underpinning facts driving this present claim did not exist at the time of the ruling. See *Picard*, 404 U.S. at 513 (noting that a habeas corpus petitioner must have fairly presented the substance of his claim to the state courts). Meaning, this new claim is inconsistent with the claim presented in [REDACTED]. [REDACTED] Therefore this claim needs to be presented to Louisiana’s highest court. *Wilder*, 274 F.3d at 259.

Second, the record contains nothing to establish that the petitioner presented this claim concerning Count 3 to the Louisiana Supreme Court. Petitioner asserts that he presented this argument to the Louisiana Civil District Court in a post-conviction proceeding. Rec. Doc. 27 at 2. The District Court denied petitioner relief because it reasoned that the crime of obstruction of justice is a crime that can “stand on its own.” *Id.* Petitioner also notes that the Louisiana Fourth Circuit Court of Appeal denied his supervisory writ on this issue. Rec. Doc. 32. Though it appears that petitioner presented this claim to the district court and attempted to present it to the Louisiana Fourth Circuit Court of Appeal, petitioner has still not exhausted his claim under 28 U.S.C. § 2254; *Baldwin*, 541 U.S. at 29. Therefore, because petitioner has not yet given the Louisiana Supreme Court an opportunity to consider his claim challenging his Count 3 conviction, this claim is unexhausted. See *Id.*

C. Mixed Petitions

The exhaustion requirement must be met with respect to each claim in a petitioner’s habeas application. See *Rose*, 455 U.S. at 520. If a petitioner’s habeas application contains both exhausted and unexhausted claims, then the application is considered a “mixed petition.” *Id.* at 522; *Pliler v. Ford*, 542 U.S. 225, 233 (2004). If a petition is found to be mixed, then the federal district court is required to “dismiss the mixed petition without prejudice and

allow petitioner's to return to state court to present the unexhausted claims to that court in the first instance." *Rose*, 455 U.S. at 522. However, the petitioner also has the choice "to proceed on the exhausted claims while risking subjecting later petitions that raise new claims to rigorous procedural obstacles." *Id.*; *Rhines*, 544 U.S. at 276.

As petitioner's second claim is unexhausted and petitioner's first claim is "arguably" exhausted, the instant application is a mixed petition subject to dismissal. See Rec. Doc. 25 at 11; *Rose*, 455 U.S. at 522 (holding "that a district court must dismiss habeas petitions containing both unexhausted and exhausted claims"); *Pliler*, 542 U.S. at 230 ("Federal district courts must dismiss habeas petitions."); *Alexander v. Johnson*, 163 F.3d 906, 908 (5th Cir. 1998) ("A habeas petition containing both exhausted an unexhausted claims is a 'mixed' petition which should be dismissed without prejudice.").

However, if there is good cause for a petitioner's failure to exhaust claims, then the district court could stay, rather than dismiss, the mixed petition. *Rhines*, 544 U.S. at 278. (stating that a court can grant a stay "if the petitioner had good cause for his failure to exhaust, his unexhausted claims are potentially meritorious, and there is no indication that the petitioner engaged in intentionally dilatory litigation tactics.") Without good cause, a petitioner can proceed with only the exhausted claims

when dismissal of the entire petition would unreasonably impair the petitioner's right to obtain federal relief. *Id.*; *Rose*, 455 U.S. at 520.

Petitioner did not argue good cause in his objection to the Report and Recommendation nor in any of his supplemental memorandums. The petitioner has failed to show good cause excusing his failure to exhaust his state remedies and has therefore not met the standard for staying his petition.

Thus, because the petitioner's application is a mixed petition, and petitioner did not show good cause for failing to exhaust state remedies, we agree with the Magistrate Judge's decision to dismiss his petition for habeas relief without prejudice. See Rec. Doc. 25 at 11.

V. CONCLUSION

Accordingly,

IT IS RECOMMENDED that petitioner's objections are OVERRULED and the Report and Recommendation (Rec. Doc. 25) be **ADOPTED as the opinion of the Court; and**

IT IS FURTHER RECOMMENDED that the petition for issuance of writ of habeas corpus is DISMISSED WITHOUT PREJUDICE.

Applicant Details

First Name	Madeleine
Last Name	Voigt
Citizenship Status	U. S. Citizen
Email Address	voigtmaddie@gmail.com
Address	<div> <div>Address</div> <div> <div>Street</div> <div>509 N Fremont Ave., Unit 113</div> <div>City</div> <div>Tampa</div> <div>State/Territory</div> <div>Florida</div> <div>Zip</div> <div>33606</div> <div>Country</div> <div>United States</div> </div> </div>
Contact Phone Number	3524671366

Applicant Education

BA/BS From	University of South Florida
Date of BA/BS	December 2017
JD/LLB From	Stetson University College of Law
	http://www.nalplawsonline.org/ndlsdir_search_results.asp
Date of JD/LLB	May 13, 2023
Class Rank	33%
Law Review/Journal	Yes
Journal(s)	Stetson Business Law Review
Moot Court Experience	No

Bar Admission

Prior Judicial Experience

Judicial Internships/
Externships **No**
Post-graduate Judicial
Law Clerk **No**

Specialized Work Experience

Recommenders

Hopper, Ryan
hopperr@gtlaw.com
8133185707

Weiner, Erica
es0725@gmail.com
917-601-9949

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Madeleine Voigt
509 N. Fremont Ave.
Unit 113
Tampa, FL 33606

April 11, 2023

Hon. Irma C. Ramirez
United States District Court for the Northern District of Texas
1100 Commerce Street, Room 1567
Dallas, TX 75242

Dear Judge Ramirez:

I am third-year student at Stetson University College of Law and Litigation Paralegal at Greenberg Traurig writing to apply to a clerkship in your chambers for the 2023-25 term. I have a desire to clerk in Dallas, and have family in Frisco and McKinney.

My resume, writing sample, and law school transcript are enclosed. Letters of recommendation from Ryan T. Hopper, David B. Weinstein, and Erica J. Weiner will follow. Please let me know if you require additional information. Thank you for your consideration.

Respectfully,


Madeleine J. Voigt

MADELEINE J. VOIGT
(352) 467-1366 – mvoigt@law.stetson.edu
Tampa, Florida 33606

EDUCATION

STETSON UNIVERSITY COLLEGE OF LAW, Gulfport, FL

J.D. Candidate, May 2023

Honors: *Stetson Business Law Review*, Notes & Comments Editor
Dean's List, Spring 2021; Honor Roll, Fall 2020
Highest Grade Designation: Ethics & The Practice of Criminal Law
GPA: 3.278
Rank: 85/263 (Top 33%)

UNIVERSITY OF SOUTH FLORIDA, Tampa, FL

B.S., Finance, December 2017

GPA: 3.48
Honors: Florida Academic Scholarship Recipient; USF Director's Scholarship Recipient

EXPERIENCE

GREENBERG TRAURIG, Tampa, FL November 2020 – May 2021, April 2022 – Present *Litigation Paralegal/Law Clerk*

Research and draft memoranda in support of motions regarding substantive and procedural issues, including complex discovery issues. Research expert witness testimony and *Daubert* challenges. Proofread court filings and ensure citations follow *The Bluebook*. Attend strategy calls with expert witnesses.

ASHLEY FURNITURE INDUSTRIES, Tampa, FL May 2021 – April 2022 *Trademark & Licensing Paralegal*

Conducted clearance searches in USPTO database (TESS) and common law searches for proposed trademarks. Prepared and filed Trademark applications with the USPTO.

ALLSTATE, Tampa, FL September 2018 – November 2020 *Litigation Paralegal*

Prepared responses to requests for production and interviewed clients for interrogatory answers. Requested medical records via subpoena. Scheduled independent medical examinations (IMEs).

DPW LEGAL, Wesley Chapel, FL March 2016 – November 2017 *Paralegal/Legal Assistant*

Scheduled hearings, depositions, and mediations. Reviewed citations to record on appeal in draft briefs for accuracy. Prepared Copyright and Trademark applications.

INTERESTS

Pickleball, investigative journalism, tropical houseplants

(/StudentSelfService/)

Madeleine J Voigt

Student Academic Transcript

Academic Transcript

Transcript Level

Law

Transcript Type

Law Sch Transcript w/Rank

Student
InformationDegrees
AwardedInstitution
CreditTranscript
TotalsCourse(s) in
Progress

This is not an official transcript. Courses which are in progress may also be included on this transcript.

Student Information

Name

Madeleine J Voigt

Curriculum Information

Current Program :

Program

Juris Doctor

College

Law School

Major and
DepartmentLaw, Department
not Declared

Degrees Awarded

Sought

Juris Doctor

Major

Law

Institution Credit

Term : Fall 2019-Law

**Academic
Standing**

Good Standing

Subject	Course	Campus	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	1181	Law School-GULFPORT	LW	CONTRACTS	275	4.000	11.00	
LAW	1290	Law School-GULFPORT/TAMPA	LW	TORTS	275	4.000	11.00	

Term Totals	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term	8.000	8.000	8.000	8.000	22.00	2.750
Cumulative	8.000	8.000	8.000	8.000	22.00	2.750

Term : Spring 2020-Law

Term Comments

A global health emergency during this term

required significant changes in course delivery

for most courses. All courses impacted by the

change in delivery were graded on a pass/fail

system.

Subject	Course	Campus	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	1150	Law School-GULFPORT/TAMPA	LW	CIVIL PROCEDURE	P	4.000	0.00	
LAW	1270	Law School-GULFPORT/TAMPA	LW	RESEARCH AND WRITING I	P	4.000	0.00	

Term Totals	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term	8.000	8.000	8.000	0.000	0.00	
Cumulative	16.000	16.000	16.000	8.000	22.00	2.750

Term : Summer 2020-Law

Academic Standing

Good Standing

Subject	Course	Campus	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	1251	Law School-	LW	REAL	350	4.000	14.00	

GULFPORT/TAMPA

PROPERTY

Term Totals	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term	4.000	4.000	4.000	4.000	14.00	3.500
Cumulative	20.000	20.000	20.000	12.000	36.00	3.000

Term : Fall 2020-Law

**Academic
Standing**

Good Standing

**Additional
Standing**

Honor Roll

Subject	Course	Campus	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	1200	Law School-GULFPORT	LW	CRIMINAL LAW	375	4.000	15.00	
LAW	1275	Law School-GULFPORT/TAMPA	LW	RESEARCH AND WRITING II	275	3.000	8.25	
LAW	2350	Law School-DISTANCE LEARNING	LW	PROFESSIONAL RESPONSIBILITY	350	3.000	10.50	

Term Totals	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term	10.000	10.000	10.000	10.000	33.75	3.375
Cumulative	30.000	30.000	30.000	22.000	69.75	3.170

Term : Spring 2021-Law

**Academic
Standing**

Good Standing

**Additional
Standing**

Dean's List

Subject	Course	Campus	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	1195	Law School-GULFPORT/TAMPA	LW	CONSTITUTIONAL LAW I	350	4.000	14.00	
LAW	2190	Law School-GULFPORT	LW	EVIDENCE	400	4.000	16.00	

Term Totals	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term	8.000	8.000	8.000	8.000	30.00	3.750
Cumulative	38.000	38.000	38.000	30.000	99.75	3.325

Term : Summer 2021-Law

Academic Standing

Good Standing

Subject	Course	Campus	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	3502	Law School-DISTANCE LEARNING	LW	FLORIDA CRIMINAL PROCEDURE	325	3.000	9.75	
LAW	3592	Law School-DISTANCE LEARNING	LW	INTERVIEWING AND COUNSELING	350	2.000	7.00	
LAW	3761	Law School-DISTANCE LEARNING	LW	NEGOTIATION AND MEDIATION	300	2.000	6.00	

Term Totals	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term	7.000	7.000	7.000	7.000	22.75	3.250
Cumulative	45.000	45.000	45.000	37.000	122.50	3.310

Term : Fall 2021-Law

Academic Standing

Good Standing

Subject	Course	Campus	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	3040	Law School-GULFPORT	LW	ADMINISTRATIVE LAW	275	3.000	8.25	
LAW	3154	Law School-GULFPORT	LW	BUSINESS ENTITIES	350	4.000	14.00	

LAW	3174	Law School-GULFPORT	LW	BUSINESS LAW REVIEW EDITOR	S+	2.000	0.00
LAW	3487	Law School-DISTANCE LEARNING	LW	FINANCIAL ADVOCACY	S	1.000	0.00

Term Totals	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term	10.000	10.000	10.000	7.000	22.25	3.178
Cumulative	55.000	55.000	55.000	44.000	144.75	3.289

Term : Spring 2022-Law

Academic Standing

Good Standing

Subject	Course	Campus	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	3090	Law School-DISTANCE LEARNING	LW	ADVANCED LEGAL RESEARCH	325	2.000	6.50	
LAW	3174	Law School-GULFPORT	LW	BUSINESS LAW REVIEW EDITOR	S+	2.000	0.00	
LAW	3190	Law School-DISTANCE LEARNING	LW	COMMERCIAL TRANSACTIONS	325	4.000	13.00	

Term Totals	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term	8.000	8.000	8.000	6.000	19.50	3.250
Cumulative	63.000	63.000	63.000	50.000	164.25	3.285

Term : Summer 2022-Law

Academic Standing

Good Standing

Subject	Course	Campus	Level	Title	Grade	Credit Hours	Quality Points	R
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LAW	3393	Law School-DISTANCE LEARNING	LW	ETHICS & THE PRACTICE OF CRIMINAL LAW	400	3.000	12.00
LAW	3541	Law School-GULFPORT	LW	INDIVIDUAL RESEARCH PROJECT	I	1.000	0.00
LAW	3607	Law School-DISTANCE LEARNING	LW	JUDICIAL PRACTICE	S+	2.000	0.00
LAW	3894	Law School-DISTANCE LEARNING	LW	SURVEY OF FLORIDA LAW	S	2.000	0.00

Term Totals	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term	8.000	7.000	7.000	3.000	12.00	4.000
Cumulative	71.000	70.000	70.000	53.000	176.25	3.325

Term : Fall 2022-Law

Academic Standing

Good Standing

Subject	Course	Campus	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	3140C	Law School-DISTANCE LEARNING	LW	APPELLATE PRACTICE & ADVANCED CRIMINAL	325	3.000	9.75	
LAW	3152	Law School-DISTANCE LEARNING	LW	BANKRUPTCY	300	3.000	9.00	
LAW	3764	Law School-DISTANCE LEARNING	LW	OVERVIEW OF FLORIDA LAW	275	3.000	8.25	

Term Totals	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term	9.000	9.000	9.000	9.000	27.00	3.000
Cumulative	80.000	79.000	79.000	62.000	203.25	3.278

Transcript Totals

Level Comments

CLASS RANK FOR

Fall 2022-Law:

85/263

Transcript Totals - (Law)	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Total Institution	80.000	79.000	79.000	62.000	203.25	3.278
Total Transfer	0.000	0.000	0.000	0.000	0.00	0.000
Overall	80.000	79.000	79.000	62.00	203.25	3.278

Course(s) in Progress

Term : Spring 2023-Law

Subject	Course	Campus	Level	Title	Credit Hours
LAW	3685	Law School-DISTANCE LEARNING	LW	LAW PRACTICE MANAGEMENT	2.000
LAW	3696C	Law School-DISTANCE LEARNING	LW	ADV LGL WRT: CONTRACT DRAFTING	2.000
LAW	3751	Law School-DISTANCE LEARNING	LW	MULTISTATE STRATEGIES	4.000

April 11, 2023

The Honorable Irma Ramirez
Earle Cabell Federal Building and
United States Courthouse
1100 Commerce Street, Room 1567
Dallas, TX 75242

Dear Judge Ramirez:

I write in support of Madeleine “Maddie” Voigt’s application to serve as a law clerk to Your Honor. My name is Ryan Hopper. I am a litigation shareholder at Greenberg Traurig, P.A., and a former law clerk to a U.S. district judge.

Over the past few years and while also attending law school, Maddie has worked as a paralegal in our complex-litigation practice. We predominantly defend sophisticated clients in mass-tort and class actions, and we staff cases leanly to concentrate knowledge and remain nimble. The work is rewarding but demanding.

Maddie has become a core team member and has consistently “punched above her weight” for her age and experience. She routinely helps multiple national-caliber expert witnesses develop opinions on diverse scientific topics—compiling studies and other materials for consideration, participating in working meetings with experts, and serving as a sounding board for anticipated testimony. She contributes to potentially dispositive legal analyses and has helped prepare dozens of Daubert and summary-judgment motions. She supports technical depositions, manages electronic discovery, and otherwise seems to take any laboring oar she can to help represent our clients efficiently and effectively.

I have no doubt that Maddie would prove to be an excellent clerk. Aside from the wealth of practical experience she would bring to the role, Maddie is intellectually curious, hard-working, practical, and self-motivated. And sometimes just as important in close-knit working environments, Maddie has a fantastic attitude. I am confident our colleagues would all agree that Maddie keeps our spirits up when the stakes are high and the nights are long.

Our practice group views clerkships as so valuable that we very rarely hire lawyers directly out of law school. We have not done so in years, much preferring instead to seek young lawyers coming out of federal clerkships. Maddie is an exception, and we are extending her an offer to join us as a lawyer when she graduates and passes the Bar. Even still, we fully support her interest in pursuing a clerkship. My own remains one of the most meaningful periods of my life and career. I hope Maddie can have a similar experience, and I know she would well serve her court and country.

If Your Honor has any questions about Maddie, it would be my pleasure to answer them.

Respectfully,

Ryan Hopper

Shareholder

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Erica J. Weiner

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March 19, 2023

Dear Judge:

I am writing this letter of recommendation in support of Madeleine Voigt for a judicial clerkship with Your Honor upon her upcoming graduation from law school in May 2023.

I first met Madeleine several years ago when she interviewed with me to be a Trademark & Licensing Paralegal on my Intellectual Property and Retail team at Ashley Furniture Industries. At the time, my position was Assistant General Counsel, Global IP & Retail at Ashley Furniture Industries, and I was looking for a candidate who had some fundamental skills, but had a yearning to learn more and really develop in the paralegal role. Madeleine impressed me from the moment we met - she was bright, motivated and was passionate about learning. She did not appear to be the type of candidate who was just saying these things to get the job, but actually meant them. Happily, this proved to be true, and while working together at Ashley Furniture Industries, Madeleine used her prior knowledge as the building blocks, and continued to learn different areas of the law, from global trademark prosecution, to intellectual property enforcement management and drafting retail store licenses and amendments. She continued to impress me, and even more so as she was a full time law student while working on my team, and handled the balancing of her obligations incredibly well. What impressed me even more was her ability to learn, accept feedback, and incorporate it in her work going forward. She was a great listener and was always trying to think of ways to help.

Based upon my experience with Madeleine, I believe she certainly has the requisite skills to excel in a clerkship, and believe her enthusiasm would only help guarantee success in this role. I hope you will consider her for a clerkship position, and thank you for your consideration.

Best regards,



Erica J. Weiner

IN THE SECOND DISTRICT COURT OF APPEAL OF FLORIDA

SALVADOR CARBAJAL)	
GARCIA)	
)	DCA CASE NO. 2D22-1409
Appellant.)	L.T. CASE NO. 19-CF-015144
v.)	
)	
STATE OF FLORIDA)	
)	
Appellee.)	
_____)	

An Appeal from the Circuit Court of the Twentieth Judicial Circuit
In and for Lee County

APPELLANT'S INITIAL BRIEF

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Counsel for Appellant Carbajal

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PREFACE

The parties are referred to herein as Mr. Carbajal and the State of Florida (the “State”). The Record on Appeal is cited as (R. *P*) and the trial transcript as (T. *P*) where “*P*” is the page.

STATEMENT OF THE CASE AND FACTS

a. The pertinent facts of the alleged offense

On March 4, 2019, Animal Control responded to a complaint about a dog tied to basketball post in a residential driveway. (T. 229, 245). The responding Animal Control officer noticed that the dog, named Walter, had blood on his chest and a rope tied around his neck that was embedded in his skin. (T. 249). Walter emitted a strong, foul odor. (T. 250-51, 284). No one was home while the officer was at the property. (T. 273). The officer removed Walter from the property and took him to Lee County Animal Services for medical treatment. (T. 260). The officer contacted Mr. Carbajal and they met at Lee County Animal Services (T. 263). Mr. Carbajal surrendered Walter. (T. 264-65). It is undisputed that Mr. Carbajal owned Walter. (T. 263-64, 448).

b. The course of proceedings and the disposition of the matter below

Salvador Carbajal was charged with one count of cruelty to animals in violation of Florida Statutes 828.12(2); 777.011. (R. 27).

Less than one month before trial, the State amended the information to charge Salvador Carbajal Garcia with one count of cruelty to animals in violation of Florida Statutes 828.12(2); 777.011. (R. 42).

Mr. Carbajal was tried by jury before the Honorable Bruce Kyle on February 4 and 5, 2020. (R. 47).

Through counsel, Mr. Carbajal filed a motion to suppress evidence obtained as a result of Animal Control and the Lee County Sheriff's Office's entry on his property, arguing that both agencies lacked the exigency required to enter his property without a warrant. (R. 50). The motion was heard before trial began and was denied. (T. 3, 67).

At trial, the State moved to limit proffered witness testimony from Mr. Carbajal's neighbors, Mr. and Ms. Gamble. (T. 459). The court granted this motion in part, excluding testimony about their interaction with law enforcement. (T. 474).

Counsel for Mr. Carbajal moved for judgment of acquittal after the State rested, arguing that the State charged a different individual, Salvador Garcia, pursuant to the amended information. (T. 444, 523). The motion was denied. (T. 449). Mr. Carbajal renewed his motion at the close of all evidence. The motion was again denied. (T. 523). After the defense rested, counsel for Mr. Carbajal requested an additional jury instruction of the standard cruelty to animals instruction. (T. 529). The request was denied. (T. 535).

The jury found Mr. Carbajal guilty as charged. (R. 74). Mr. Carbajal moved for a new trial, arguing that the trial court committed prejudicial error when it excluded Mr. and Ms. Gamble's testimony and denied Mr. Carbajal's motion to suppress and motion for judgment of acquittal. (R. 98). The court did not rule on the motion and Mr. Carbajal was sentenced to 364 days in jail as a condition to five years of probation. (R. 106, 113-14).

c. The pertinent facts of the trial

Before opening arguments, the court heard Mr. Carbajal's motion to suppress. (T. 11-68). The state proffered testimony from Animal Control Officer Zemper Ortiz and Lee County Sheriff's deputy Joshua Roedding. (T. 12, 44). Mr. Carbajal argued that the proffered

testimony did not show the exigent circumstances required to enter his property without a warrant. The court denied the motion, finding that Officer Ortiz's observations warranted Walter's immediate removal. (T. 67-68).

Animal Control Officer Zemper Ortiz testified that she received the complaint about Walter on the morning of March 3, 2019 and arrived at Mr. Carbajal's home to investigate the complaint the next day. (T. 247). Officer Ortiz approached Walter and noticed the embedded rope and wound on Walter's neck. (T. 250). She testified that she was approximately two feet away from Walter when she noticed a rotting smell. (T. 250). Walter was friendly and wanted Officer Ortiz to pet him. (T. 37). Walter was not whimpering or barking. (T. 37). Officer Ortiz noticed a pink bucket near Walter that contained water. (T. 23-24). She testified that she knocked on the door of the house and realized no one was home. (T. 251). She then returned to Walter and called dispatch for Lee County Sheriff's Office to respond. (T. 251). While waiting for the deputy to arrive, Officer Ortiz did not try to remove the rope from Walter's neck. (T. 253). She testified that Walter was unable to take shelter underneath Mr. Carbajal's vehicle parked in the driveway. (T. 255-56).

Lee County Sheriff's Deputy Joseph Roedding responded to Officer Ortiz's call for assistance. (T. 283-84). Deputy Roedding testified that when he arrived on scene, Officer Ortiz requested he generate a case number so she could put a notification on Mr. Carbajal's door that Animal Control was at the property. (T. 284). Deputy Roedding testified this was the only reason he was called to the property. (T. 284). When he approached the driveway, he noticed Walter come out from under Mr. Carbajal's parked vehicle. (T. 290). He testified that he noticed an odor, possibly feces, when he approached Walter. (T. 285-86). He did not notice Walter's injury at first. (T. 289). Officer Ortiz asked Deputy Roedding to help cut the rope tying Walter to the basketball hoop. (T. 288). He cut the rope and then helped Officer Ortiz take Walter to her Animal Control bus. (T. 289). When Deputy Roedding asked Officer Ortiz why Walter was being removed from the property, Officer Ortiz lifted Walter's jaw, and Deputy Roedding noticed "swelling to the neck and a little red mark" where the rope was attached to Walter. (T. 289). This is the first time Deputy Roedding noticed that Walter was injured. (T. 289).

During proffered direct examination, Mr. Gamble testified that on the morning of Mr. Carbajal's arrest, five Lee County Sheriff's

officers came to his garage door. (T. 454). Mr. Gamble testified that the officers “kept trying to tell us that we needed to say something bad about Mr. Carbajal.” (T. 455). He further testified that the officers talked to him about the media. (T. 455). More specifically, he quoted the officer telling him that he needed to say something bad about Mr. Carbajal for the media. (T. 456).

Ms. Gamble testified during proffered direct examination that the officers wanted her to say there was a smell (coming from Walter) and informed her that the media will be at her door after Mr. Carbajal’s arrest. (T. 467).

The jury received the following standard instructions: Introduction to Final Instructions, Statement of the Charge, Count I Aggravated Animal Cruelty, Principals, Plea of Not Guilty, Reasonable Doubt and Burden of Proof, Defendant’s Statements, Rules for Deliberation, Cautionary Instruction, Verdict, and Submitting Case to the Jury. (R. 59-71). Counsel stipulated to the removal of numbers nine and ten from the standard instructions for Weighing the Evidence. (T. 526). Mr. Carbajal requested an instruction of the standard animal cruelty instruction based on F.S. 828.12(1). (T. 530). The request was denied. (T. 535).

The verdict form was general: “the defendant is guilty of Aggravated Animal Cruelty.” (R. 74).

SUMMARY OF THE ARGUMENT

Mr. Carbajal’s motion to suppress evidence obtained from the warrantless search of his property was denied in error because the State failed to show exigent circumstances. *Brinkley v. County of Flagler*, 769 So. 2d 468 (Fla. 5th DCA 2000); *Davis v. State*, 834 So. 2d 322 (Fla. 5th DCA 2003). Walter was not subject to seizure under the plain view doctrine. *Pagan v. State*, 830 So. 2d 792, 808 (Fla. 2002). Thus, Mr. Carbajal’s judgment and sentence should be vacated.

The trial court erred when it denied Mr. Carbajal’s request for an additional jury instruction of the standard animal cruelty instructions, because the instruction given did not adequately cover his theory of defense. *See Parker v. State*, 641 So. 2d 369, 376 (Fla. 1994); *see also Stephens v State*, 787 So. 2d 747, 756 (Fla. 2001). Accordingly, at the least, Mr. Carbajal’s judgment and sentence should be reversed and remanded for new trial.

ARGUMENT

I. MR. CARBAJAL’S MOTION TO SUPPRESS WAS DENIED IN ERROR BECAUSE THE STATE FAILED TO SHOW THE EXIGENT CIRCUMSTANCES REQUIRED FOR A WARRANTLESS SEARCH AND SEIZURE

This Court reviews the denial of a motion to suppress using a mixed standard: the trial court’s application of the law is reviewed *de novo*, but this Court defers to the trial court’s factual findings if they are supported by competent, substantial evidence. *Duke v. State*, 82 So. 3d 1155, 1157-58 (Fla. 2d DCA 2012).

Law enforcement may enter private property without an arrest or search warrant to: preserve life or property, render first aid and assistance, or conduct a general inquiry into an unresolved crime. *Brinkley*, 769 So. 2d at 471.

However, they must not enter with an accompanying intent to arrest or search, and, importantly, they must have reasonable grounds to believe there is a substantial threat of imminent danger to life, health, or property. *See id.*

Moreover, under the plain view doctrine, law enforcement can only seize an object without a warrant if the object’s incriminating character is “immediately apparent” and the officers have a lawful

right of access to the object. *Jones v. State*, 648 So. 2d 669 (Fla. 1994) (citing *Minnesota v. Dickerson*, 508 U.S. 366, 113 S. Ct. 2130 (1993)).

Here, the court heard proffered testimony from Animal Control Officer Zemper Ortiz and Lee County Sheriff's deputy Joshua Roedding. (T. 12, 44). Mr. Carbajal argued that the proffered testimony did not show the exigent circumstances required to enter his property without a warrant. (T. 66-67). However, the court found that Officer Ortiz's observations warranted immediate action. (T. 66-67).

The record does not demonstrate that Animal Control and the Lee County Sheriff's Office's had the exigency required to search Mr. Carbajal's property without a warrant. The investigating Animal Control officer arrived at Mr. Carbajal's home to investigate the complaint, that Walter was tied to a basketball post in a driveway, a day after it was received. (T. 247). It wasn't until the officer approached Walter that she noticed blood on Walter's chest (T. 250). She noticed that Walter smelled once she was within two feet of him. (T. 250). Walter was friendly and not showing any obvious signs of distress, like whimpering or barking. (T. 37). Walter had water available to him. (T. 23-24). Notably, once the officer noticed the rope

embedded in Walter's neck, the officer never tried to remove it. (T. 253).

When the Lee County Sheriff's deputy arrived at Mr. Carbajal's property to complete paperwork, the deputy did not notice Walter's injury until he helped place Walter into the animal control officer's vehicle. (289). He did not notice Walter's injury while cutting the rope. (289). The deputy also noticed an odor, which he thought may have been feces. (T. 285-86). Once Walter was in the animal control officer's vehicle, the deputy noticed "swelling to the neck and a little red mark" after the animal control officer lifted Walter's chin to expose his neck (289). This was the first time the deputy noticed that Walter was injured. (289).

The facts in *Brinkley* are in stark contrast. In *Brinkley*, an animal control officer and sheriff's deputy responded to a complaint about many animals being kept in unhealthy conditions on a farm. *Brinkley*, 769 So. 2d at 469. Upon arriving at the gate of the property, both officers were "immediately struck by the undeniable reality of the horrid existence of inhumanity." *Id* at 471. Just by standing at the gate, both officers were overwhelmed by the nauseating smell of animal waste and could see piles upon piles of trash and feces on the

property. Dogs were running freely around the property and barking so loud that the officers had to shout to speak to one another. When approaching the farmhouse, the officers noticed a decaying dog carcass on top of a stack of small pet carriers on the porch. There was a living dog in one of the small carriers and fluid from the decaying carcass was dripping onto the living dog. The insides of the animal carriers were lined with approximately three inches of feces and there were many water bowls containing black, foul-smelling water or no water at all. Further inspection of the property revealed a second dead dog, partial dog remains, and a roach infestation so severe that roaches were eating a puppy's flesh.

Given the obvious distress of the animals and abhorrent conditions of the property, any reasonable person would have concluded that the immediate need for protective action was warranted. *Id* at 472. The animals on the property were seized. *Id*.

The facts in Mr. Carbajal's case simply do not demonstrate the exigency required for a warrantless search and seizure. Walter was in good spirits and not showing any obvious signs of distress. Walter's wound was not immediately apparent. The deputy did not even notice the wound until after he helped load Walter into the

animal control vehicle. At that point, the deputy asked why Walter was being removed and the animal control officer lifted Walter's chin to show the deputy the wound.

Moreover, besides the smell with a conflicting source, the record does not show Mr. Carbajal's property and Walter's area to be in a horrid, inhumane condition. Thus, any reasonable person who arrived at Mr. Carbajal's property the day it was investigated would not have concluded that an urgent and immediate need for protective action was warranted. Accordingly, Mr. Carbajal's motion to suppress was denied in error and his judgment and sentence should be vacated.

II. DENIAL OF MR. CARBAJAL'S REQUEST FOR THE STANDARD ANIMAL CRUELTY INSTRUCTION DEPRIVED MR. CARBAJAL OF AN ADEQUATE THEORY OF DEFENSE

This Court reviews a trial court's decision on the giving or withholding of a proposed jury instruction is under the abuse of discretion standard, and a defendant is entitled to have the jury instructed on the rules of law applicable to his theory of defense if there is any evidence to support such instructions. *Aumuller v. State*, 944 So. 2d 1137, 1142 (Fla. 2d DCA 2006).

The trial court erred when it denied Mr. Carbajal's request for the misdemeanor animal cruelty instruction, because the felony instruction given did not adequately cover his theory of defense. *See Parker v. State*, 641 So. 2d 369, 376 (Fla. 1994); *see also Stephens v. State*, 787 So. 2d 747, 756 (Fla. 2001).

To receive an additional instruction, the requested instruction must be supported by the evidence, be a correct statement of the law that is not misleading or confusing, and ensure that the defendant's theory of defense is adequately covered. *See Stephens*, 787 So. 2d at 756. Whether the animal cruelty amounts to a misdemeanor under F.S. 828.12(1) or a felony under F.S. 828.12(2) is a question for the jury. *See State v. Morival*, 75 So. 3d 810 (Fla. 2d DCA 2011) (citing *Hynes v. State*, 1 So. 3d 328 (Fla. 5th DCA 2009)).

Here, it is undisputed that Mr. Carbajal's requested standard instruction is a correct statement of law that is not misleading or confusing. In addition, the requested instruction clearly encompasses Mr. Carbajal's alleged conduct of animal cruelty (T. 530-531). Lastly, the requested instruction was required to ensure that Mr. Carbajal's theory of defense was adequately covered pursuant to *Stephens* and *Morival*.

Mr. Carbajal requested jury instruction 29.13(a), which is the standard instruction for cruelty to animals under F.S. 828.12(1). (T. 530). The trial court denied Mr. Carbajal's request solely because cruelty to animals is not listed as a category two lesser included offense on the standard instructions for animal cruelty. (T. 535).

However, the crux of Mr. Carbajal's defense was that he did not intentionally harm Walter. (T. 235-36). Mr. Carbajal offered witness testimony from neighbors that interacted with and observed Walter on a regular basis (T. 481-83, 488-92). Mr. Carbajal testified that he did not notice anything wrong with Walter and Walter was not in distress (T. 503-505).

It was possible for the jury to find that Mr. Carbajal committed a misdemeanor under F.S. 828.12(1) because there is evidence to support that he did not intentionally harm Walter. Thus, the jury should have received the standard instruction for cruelty to animals under F.S. 828.12(1). Without it, Mr. Carbajal was deprived of his theory of defense that he did not intentionally harm Walter. Accordingly, judgment and sentence should be reversed and remanded for new trial.

CONCLUSION

For the reasons contained herein, this Court must vacate Mr. Carbajal's judgment and sentence, and remand for new trial.

Respectfully submitted,

Madeleine Voigt, Esq.
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Counsel for Appellant Carbajal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via email to Pamela Jo Bondi, Office of the Attorney General, CrimappTPA@myfloridalegal.com, Concourse Center #4, 3507 E. Frontage Rd. – Suite 200, Tampa, FL 33607, (813) 287-7900, on this 21st day of November, 2022.

S/ Madeleine Voigt
Madeleine Voigt, Esq.
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Counsel for Appellant Carbajal

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the font size used in this Brief is Bookman Old Style 14 point and Courier New 12 point in compliance with Rule 9.210(a)(2) of the Florida Rules of Appellate Procedure.

S/ Madeleine Voigt

Applicant Details

First Name	Joseph
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Last Name	Welsh
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Contact Phone Number	7073300430

Applicant Education

BA/BS From	University of California-Davis
Date of BA/BS	September 2017
JD/LLB From	University of San Diego School of Law
	http://www.nalplawschoolsonline.org/ndlsdir_search_results.asp?lscd=90510&yr=2012
Date of JD/LLB	May 14, 2022
Class Rank	50%
Law Review/Journal	Yes
Journal(s)	University of San Diego Journal of Climate and Energy Law
Moot Court Experience	No

Bar Admission

Prior Judicial Experience

Judicial
Internships/ **No**
Externships
Post-graduate
Judicial Law **No**
Clerk

Specialized Work Experience

Recommenders

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**This applicant has certified that all data entered in this profile and
any application documents are true and correct.**

Joseph A. Welsh

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January 29, 2023

The Honorable Magistrate Judge Irma Ramirez
Earle Cabell Federal Courthouse
1100 Commerce Street, Room 1567
Dallas, Texas 75142

Honorable Magistrate Judge Ramirez,

It is with great interest that I am writing to apply for a clerkship in your chambers beginning August 2023. Growing up in a community surrounded by oil refineries may seem an abnormal experience to cultivate an interest in the law. However, the severe impact of toxic pollution on the health of the individuals I grew up around instilled me with a passion to improve the lives of others through our justice system. As a recent graduate of the University of San Diego School of Law I hope to take the next step toward such work as a clerk in your chambers.

Substantial trial experience for an attorney in his first full year of practice provides me an understanding of trial procedure and strategy greater than other applicants which would allow me to immediately contribute to your chambers. The opportunity to support a highly reputed judge and gain exposure to a wide-ranging docket aligns with my intent to expand the complex litigation skills I have developed in practice areas from environmental mass torts to energy contracts.

In my nascent legal career, I have already developed the legal skills that will allow me to effectively fulfill the duties required to positively influence your chambers. In my time with Colorado's Fourth Judicial District Attorney's Office, I have successfully conducted nearly twenty jury trials, dozens of motions, felony level preliminary hearings, and supervised two attorneys responsible for 2,000 cases. This experience bolstered my confidence in the courtroom and my oral and written advocacy skills. Involvement with the University of San Diego Journal of Climate and Energy Law (JCEL), as a two-year editor and published author, enhanced my research and analytical skills which will translate well to resolving complex legal issues. Finally, my motions drafting and complex research work at both Gagen & McCoy and Gomez Trial Attorneys enhanced my ability to effectively shift between complicated tasks including research and analysis of legal issues related to Endangered Species Take Permits, water mitigation banks, mass tort environmental cases, and the Federal Tort Claims Act.

Finally, as to your listed preference for a top twenty-five percent applicant. Excuses do not replace performance, however, for much of my law school career I was on such trajectory until I spent an extended period of my 3L year in the hospital including during final exams.

I look forward to the opportunity to discuss how I can contribute to your chambers. Thank you for your consideration.

Respectfully,

Joseph A. Welsh

Joseph A. Welsh

206 East E Street • Benicia, CA 94510 • joewelsh@sandiego.edu • (707) 303-0430

EDUCATION

University of San Diego School of Law <i>Juris Doctor, Environmental and Energy Law Concentration</i>	May 2022
GPA: 3.49	
Activities: Environmental Law Society, President, 2021-2022 Journal of Climate and Energy Law: Articles Editor, 2020-21; Comments Editor, 2021-22	
Awards: CALI Award for Excellence in Elections Law, 2021 Publication in the <i>University of San Diego Journal of Climate and Energy Law</i> Faculty Honor Scholarship	
University of California, Davis <i>Bachelor of Arts in History of the Middle East</i>	May 2017
GPA: 3.57	

EXPERIENCE

Fourth Judicial District Attorney's Office , Colorado Springs, CO <i>Deputy District Attorney</i>	August 2022 – Present
<ul style="list-style-type: none"> Conduct misdemeanor trials focused on child abuse, domestic violence, assault, DUI charges, and careless driving resulting in death. Argue motions to suppress including reasonable suspicion, probable cause, character evidence, expressed consent, and Miranda violations among other statutory and constitutional issues. Advise and aid two Deputy District Attorneys in management of their dockets and jury trials. Between two dockets, manage approximately 1,500 misdemeanor cases, conducted pre-trial readiness and revocation hearings, and communicated with domestic violence and child abuse victims. 	
Gomez Trial Attorneys , San Diego, CA <i>Law Clerk</i>	November 2021 – April 2022
<ul style="list-style-type: none"> Drafted environmental toxic tort and mold abatement complaints filed with state and federal district court. Composed memoranda on research regarding the Federal Tort Claims Act application to toxic torts. Propounded and responded to written discovery for environmental and personal injury actions. 	
Fourth Judicial District Attorney's Office , Colorado Springs, CO <i>Student Practice Act Attorney</i>	June 2021 – August 2021
<ul style="list-style-type: none"> Held first and second chair for four misdemeanor trials on DUIs, child abuse, and domestic violence cases. Argued motions including reasonable suspicion, probable cause, character evidence, and Miranda violations. Helped manage county court case dockets, conducted pre-trial readiness and revocation hearings, and communicated with domestic violence and child abuse victims. 	
Energy Policy Initiatives Center Clinic , San Diego, CA <i>Student Attorney</i>	January 2021 – May 2021
<ul style="list-style-type: none"> Researched and analyzed California's S.B. 743 mandate to report land use projects induced greenhouse gas emissions through a new Vehicle Miles Traveled (VMT) metric. Created a survey to document how 482 municipalities have implemented the VMT mandate into Environmental Impact Reports under the California Environmental Quality Act. 	
Danko Meredith Trial Lawyers , Redwood City, CA <i>Law Clerk</i>	November 2020 – April 2021
<ul style="list-style-type: none"> Interviewed low-income renters affected by the 2017 Tubbs Fire and the 2018 Camp Fire disasters. Drafted zone of danger, nuisance, and lost property claims for disadvantaged victims of PG&E wildfire cases. 	
Gagen McCoy , Danville, CA <i>Law Clerk</i>	May 2020 – November 2020
<ul style="list-style-type: none"> Authored memoranda and motions on water mitigation bank disputes, contract disputes, and municipal issues. Summarized wind farm contracts and temporary takings permit. 	
Congressman Mark DeSauliner , Richmond, CA <i>Congressional District Office Intern</i>	April 2019 – August 2019
<ul style="list-style-type: none"> Drafted constituent correspondence, fielded constituent inquiries and opinion calls, and represented the Congressman at community organization events in a diverse low-income community. 	

COMMUNITY SERVICE AND INTERESTS

Pinole Rotary & Boys and Girls Club , Richmond, CA <i>Aided event coordination and fundraising</i>
Fly Fishing <i>Fostered my desire to preserve the environment that enriched my childhood</i>
Hockey <i>Created a life goal to aid the Green Rink Movement and renovate high carbon output rinks</i>

8/4/22, 2:08 PM

Academic Transcript



Academic Transcript

009300593 Joseph A. Welsh
Aug 04, 2022 01:08 pm

This is not an official transcript. Courses which are in progress may also be included on this transcript.

[Institution Credit](#) [Transcript Totals](#)

Transcript Data

STUDENT INFORMATION

Birth Date: 03-AUG-****

Curriculum Information

Program

Juris Doctor

Program: Juris Doctor

College: School of Law

Campus: Law

Major and Department: Law, Law

***Transcript type:Web Unofficial transcript is NOT Official ***

DEGREE AWARDED

Awarded: Juris Doctor **Degree Date:** May 21, 2022

Curriculum Information

Primary Degree

Program: Juris Doctor

College: School of Law

Campus: Law

Major: Law

INSTITUTION CREDIT [-Top-](#)

Term: Fall 2019

Academic Standing: Good Standing

Subject	Course Level	Title	Grade	Credit Hours	Quality Points	R
LWAA	510	JD Civil Procedure	3.4	4.000	13.60	
LWAA	525	JD Criminal Law	3.3	4.000	13.20	
LWAA	540	JD Torts	3.7	4.000	14.80	
LWAA	545	JD Legal Writing & Research I	3.2	2.000	6.40	
LWAA	575	JD Experiential Advocacy Prac. I Experiential Learning	P	1.000	0.00	

Term Totals (Law)

8/4/22, 2:08 PM

Academic Transcript

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	15.000	15.000	15.000	14.000	48.00	3.43
Cumulative:	15.000	15.000	15.000	14.000	48.00	3.43

Unofficial Transcript

Term: Spring 2020

Term Comments: Due to the COVID-19 pandemic, Spring 2020 grading was mandatory Pass/No Credit, except for grades previously posted for courses completed early in the semester.
All courses taken are reflected on the transcript.

Academic Standing: Good Standing

Subject	Course Level	Title	Grade	Credit Hours	Quality Points	R
LWAA	515	JD	Constitutional Law I	P	4.000	0.00
LWAA	520	JD	Contracts	P	4.000	0.00
LWAA	530	JD	Property	P	4.000	0.00
LWAA	546	JD	Legal Writing & Research II	P	2.000	0.00
LWAA	576	JD	Experiential Advocacy Prac. II Experiential Learning	P	1.000	0.00

Term Totals (Law)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	15.000	15.000	15.000	0.000	0.00	0.00
Cumulative:	30.000	30.000	30.000	14.000	48.00	3.43

Unofficial Transcript

Term: Fall 2020

Academic Standing: Good Standing

Subject	Course Level	Title	Grade	Credit Hours	Quality Points	R
LWBC	545	JD	Corporations	3.5	4.000	14.00
LWPP	510	JD	Administrative Law	3.4	4.000	13.60
LWPP	525	JD	Constitutional Law II	3.8	3.000	11.40
LWPP	540	JD	Energy Law and Policy	3.7	3.000	11.10
LWPP	553	JD	Election Law	4.3	2.000	8.60

Term Totals (Law)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	16.000	16.000	16.000	16.000	58.70	3.67

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Academic Transcript

Cumulative:	46.000	46.000	46.000	30.000	106.70	3.56
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Unofficial Transcript

Term: Spring 2021

Term Comments: CLASS RANK: 65/263 TIE
Academic Standing: Good Standing

Subject	Course Level	Title	Grade	Credit Hours	Quality Points	R
LWEV	520	JD Environmental Law	4.0	3.000	12.00	
LWGC	590	JD Trusts & Estates	3.5	3.000	10.50	
LWLP	529	JD Evidence	3.6	4.000	14.40	
LWVL	518	JD Energy Clinic I Experiential Learning	H	3.000	0.00	

Term Totals (Law)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	13.000	13.000	13.000	10.000	36.90	3.69
Cumulative:	59.000	59.000	59.000	40.000	143.60	3.59

Unofficial Transcript

Term: Summer 2021

Academic Standing: Good Standing

Subject	Course Level	Title	Grade	Credit Hours	Quality Points	R
LWVL	596	JD Agency Externship I Experiential Learning	P	4.000	0.00	

Term Totals (Law)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	4.000	4.000	4.000	0.000	0.00	0.00
Cumulative:	63.000	63.000	63.000	40.000	143.60	3.59

Unofficial Transcript

Term: Fall 2021

Academic Standing: Good Standing

Subject	Course Level	Title	Grade	Credit Hours	Quality Points	R
LWAA	580	JD Professional Responsibility	3.1	3.000	9.30	
LWAA	590	JD Tax I	3.0	3.000	9.00	
LWCR	520	JD Criminal Procedure I	3.4	3.000	10.20	
LWEV	503	JD Climate Change Law and Policy Written Work	3.1	3.000	9.30	

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Academic Transcript

LWEV	511	JD	Water Law	3.4	3.000	10.20
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Term Totals (Law)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	15.000	15.000	15.000	15.000	48.00	3.20
Cumulative:	78.000	78.000	78.000	55.000	191.60	3.48

Unofficial Transcript

Term: Spring 2022

Academic Standing: Good Standing

Subject	Course Level	Title	Grade	Credit Hours	Quality Points	R
LWEV	506	JD	Cross Border Marine Pollution Experiential Learning	H	3.000	0.00
LWGC	576	JD	Multistate Bar Exam Prep	3.3	4.000	13.20
LWLP	570	JD	Remedies	3.7	4.000	14.80

Term Totals (Law)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	11.000	11.000	11.000	8.000	28.00	3.50
Cumulative:	89.000	89.000	89.000	63.000	219.60	3.49

Unofficial Transcript

TRANSCRIPT TOTALS (LAW) -Top-

Level Comments: Concentration in Environmental and Energy Law

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Total Institution:	89.000	89.000	89.000	63.000	219.60	3.49
Total Transfer:	0.000	0.000	0.000	0.000	0.00	0.00
Overall:	89.000	89.000	89.000	63.000	219.60	3.49

Unofficial Transcript

RELEASE: 8.7.1

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UNOFFICIAL PAGE: 1

JOSEPH AARON WELSH

ID 913-355-211

UNDERGRADUATE ACADEMIC RECORD

DEGREE AWARDED: 15-SEP-17
BACHELOR OF ARTS
MAJOR(S): HISTORY
MINOR(S): POLITICAL SCIENCE

ADMITTED: FALL QUARTER 2015

TRANSFER CREDIT:
SANTA BARBARA CITY C 0813 TO 0515 91.50
JC TRANSFER 91.50
TOTAL TRANSFER UNITS ALLOWED: 91.50

INSTITUTION CREDIT:

FALL QUARTER 2015

CURRENT COLLEGE(S): LETTERS & SCIENCE
CURRENT MAJOR(S): HISTORY

HIS	142B	MEMORY OF THE HOLOCAUST	B+	4.00	13.20	
HIS	188	US IN THE 1960S	A-	4.00	14.80	
POL	003	INTERNATL RELATIONS	A-	4.00	14.80	
	COMPL	ATTM	PSSD	GPTS	GPA	
TERM:	12.00	12.00	12.00	42.80	3.566	
UC CUM:	12.00	12.00	12.00	42.80	3.566	

WINTER QUARTER 2016

ARE	018	BUSINESS LAW	A	4.00	16.00	
HIS	113	MODERN ISRAEL	B+	4.00	13.20	
HIS	189	CALIFORNIA HISTORY	B	4.00	12.00	
	COMPL	ATTM	PSSD	GPTS	GPA	
TERM:	12.00	12.00	12.00	41.20	3.433	
UC CUM:	24.00	24.00	24.00	84.00	3.500	

SPRING QUARTER 2016

GEL	016	THE OCEANS	B+	3.00	9.90	
HIS	112C	JEWISH MUSLIM WORLD	A	4.00	16.00	
HIS	145	WAR/REVOLUTION: EUR	B+	4.00	13.20	
SAS	005	DISCOVERY:SCI & SOCIETY	A	3.00	12.00	
	COMPL	ATTM	PSSD	GPTS	GPA	
TERM:	14.00	14.00	14.00	51.10	3.650	
UC CUM:	38.00	38.00	38.00	135.10	3.555	

SUMMER SESSION 2 2016
WITHDRAWN FROM UNIVERSITY

FALL QUARTER 2016

CMN	192	INTERN IN COMMUNICATION	P	3.00	.00	
HIS	102A	ANCIENT	B+	5.00	16.50	
HIS	196A	MEDIEVAL INDIA	A	4.00	16.00	
POL	126	ETHNIC CONFLICT	P*	4.00	.00	
POL	165	MASS MEDIA & POLITICS	B	4.00	12.00	
	COMPL	ATTM	PSSD	GPTS	GPA	
TERM:	20.00	13.00	13.00	44.50	3.423	
UC CUM:	58.00	51.00	51.00	179.60	3.521	

WINTER QUARTER 2017

CMN	192	INTERN IN COMMUNICATION	P	3.00	.00	
HIS	136	SCIENTIFIC REVOLUTION	A	4.00	16.00	

***** CONTINUED ON NEXT COLUMN *****

JOSEPH AARON WELSH

CONTINUED

POL	130	RECENT US FOREIGN POL	A	4.00	16.00	
POL	150	JUDICIAL POLITICS	A	4.00	16.00	
UWP	104B	LEGAL WRITING	B+	4.00	13.20	
	COMPL	ATTM	PSSD	GPTS	GPA	
TERM:	19.00	16.00	16.00	61.20	3.825	
UC CUM:	77.00	67.00	67.00	240.80	3.594	

SPRING QUARTER 2017

HIS	006	INTRO TO MIDDLE EAST	A	4.00	16.00	
HIS	193B	MIDDLE EAST FROM 1914	B+	4.00	13.20	
POL	120	THEORIES INT'L POLITICS	B+	4.00	13.20	
POL	151	CONSTITUTIONAL POLITICS	B+	4.00	13.20	
	COMPL	ATTM	PSSD	GPTS	GPA	
TERM:	16.00	16.00	16.00	55.60	3.475	
UC CUM:	93.00	83.00	83.00	296.40	3.571	

***** TRANSCRIPT TOTALS *****

TOTAL UNITS COMPLETED: 184.50 UC GPA: 3.571
UC BALANCE POINTS: 130.4

STUDENT IN GOOD ACADEMIC STANDING

***** MEMORANDA *****

UNIVERSITY REQUIREMENTS:
ELWR: SATISFIED 06/05/15
AMERICAN HIST/INST - SATISFIED 06/05/15
HIGH SCHOOL: JUSTIN SIENA HIGH SCHOOL JUN-13

END OF RECORD

UNOFFICIAL UC DAVIS TRANSCRIPT COMPUTER PRODUCED ON
12/26/20 - ISSUED TO STUDENT.

September 30, 2022

Subj: Letter of Recommendation for Joseph A. Welsh

Your Honor,

From November 2021 to April 2022, I had the pleasure of working with Joe Welsh at Gomez Trial Attorneys, San Diego, California. He served as a law clerk for my Trial Team. We have an extremely busy and diverse civil docket with matters in California State Court as well as Federal District Court. Given our workload, our Team relies a great deal on law clerks to assist our Team's attorneys with legal research, drafting pleadings, as well as assisting with trial preparation. Joe made himself an integral part of our Team and I give him my highest unqualified recommendation.

During his time with us, Joe completed numerous research assignments, reviewed discovery, drafted both formal and informal memoranda, drafted responsive pleadings, and provided candid and insightful commentary on litigation strategy. Joe required minimal direction and produced work of such high quality that I was always amazed that he was a law student. In fact, when I incorporated Joe's work product into responsive pleadings, it remained largely unchanged.

Having practiced law for more than 29 years as a Marine Judge Advocate, Assistant United States Attorney (for 18 years), and private practitioner, I can unequivocally state that Joe is one of the brightest, well-written, and hardest working clerks that I have been fortunate to work with in my career. He demonstrated professionalism beyond his years. Further, his intellect, attention to detail, and dedication to performing every task in an exemplary manner will serve him well throughout his career.

Given the depth and breadth of my federal practice experience, it is my opinion and strong belief that Joe would make an outstanding clerk for any District Court Judge. He can handle multiple complex assignments; he can quickly orient myself in and discuss complicated legal issues; he provides thorough and concise written analysis; and he works efficiently and effectively on a wide variety of simultaneous pending matters. I am quite confident that Joe will make himself an integral part of any Court's staff.

Again, without hesitation, I give Joe my highest unqualified recommendation. Please feel free to contact me if you would like to discuss my recommendation further. I may be reached by e-mail at pstarita@thegomezfirm.com or by telephone at (760) 644-0041.

Respectfully,

Paul L. Starita



William E. Gagen, Jr.
Gregory L. McCoy
Charles A. Koss
Michael J. Markowitz
Richard C. Raines
Barbara Duval Jewell
Robert M. Fanucci
Stephen T. Buehl
Sarah S. Nix
Daniel A. Muller
C. Joseph Doherty, III
Sumita Bhandari
Elizabeth R. Weiss
Melissa A. Kerns
Rachel Margolis Chapman
Armand M. Estrada
Aileen Rodriguez Mazanetz

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Fax: (707) 963-5527

dam@gagenmccoy.com

October 20, 2020

Recommendation for Joseph Welsh

Dear Judge _____,

I am very pleased to write this letter of recommendation and support for Mr. Joseph Welsh's judicial clerkship application. As his supervising attorney the past six-plus months that he's interned at our firm, I have gotten to know Joe very well. Although I have been a litigator for over 25 years, I do recall what law school was like. My expectations of what a "1L" could do were modest. That quickly changed. I am happy to say without hesitation that Joe immediately impressed me with his intelligence, work ethic, timeliness, communication style, and research and writing skills. He is a quick study, possessing far more ability than I imagined. As noted herein, I am confident he will be an exceptionally productive, effective law clerk, and excellent attorney.

My practice emphasizes disputes (pre-litigation, and litigation) involving land use, development, eminent domain, inverse condemnation ("takings"), and related property matters, including purchase/sale transactions, seller/broker breaches of duties, easements, boundary issues, quiet title, and partition actions, and some business and inheritance disputes. The land use, takings, and development matters, in particular, are complicated by California's intricate web of environmental regulations, constitutional nuances, and myriad procedural requirements, including exhaustion of administrative remedies, ripeness, standing, overlapping, often short, limitations periods, and the peculiar way some such cases are brought via petitions for writ of mandate, rather than normal, civil complaints.

For the past six-plus months, Mr. Welsh has directly supported me, every day, in all the above types of matters, e.g., by researching myriad, crucial legal issues, preparing research memoranda, reviewing and supplying key cites from records on appeal, and drafting briefs and supporting declarations for motions, pleadings, and related trial and appellate court

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Recommendation of Joseph Welsh
October 20, 2020
Page 2

filings. The wide ranging topics have included, for example, the enforceability and interpretation of contractual “limitations on damages” clauses, whether land owners sued by a public agency must present administrative Government Claims Act claims before filing cross-complaints, “incidental take permits” under the federal and state Endangered Species Acts, etc.

I quickly began heavily relying on - and I and my clients greatly benefitted from – Joe’s punctual, succinct, well-researched, articulate work product. He possesses outstanding research skills and creativity, innately formulates clear, concise legal arguments, and anticipates opponents’ likely positions. He is also proficient at wading through and cogently summarizing extensive, complex business, property valuation, and related data. I am extremely impressed with his persistent work ethic and determination to put in extra hours to timely deliver high quality, effective analysis. On many occasions, without guidance, he found viable ways to use our opponents’ arguments and cases in our favor.

Given the above, I frankly could not believe Joe came to us with only one year of law school under his belt. I kept wondering if his father, mother, or aunt is a veteran litigator, with whom he interned or apprenticed several years. He simply knocked it out of the park here. He consistently proved to be a quick and persistent study, eager to learn all he could out of every assignment. While due to the pandemic he had to complete the bulk of his work remotely, he happily came into the office for necessary events and meetings. He knows when and how to seek or clarify direction, understands it the first time, and gave me nothing that would have benefited from more checking-in. I trusted him, with good reason, to directly work with my clients and our experts. Indeed, once word got out, I had to jealously guard against him being poached by my partners.

In conclusion, I very highly, wholeheartedly recommend Mr. Welsh for judicial clerkship. His exceptional abilities, intelligence, and drive are complemented by his likeable, easy-going, diplomatic personality. He will certainly be an essential asset to any judge, law firm, or client.

If I can provide any further information, please feel free to contact me at any time.

Sincerely,
GAGEN, McCOY, et al.

Daniel A. Muller